THE LAW RELATING TO RIOTS

AND

UNLAWFUL ASSEMBLIES.

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TOGETHER WITH A VIEW OF THE DUTIES, POWERS AND LIABILITIES OF MAGISTRATES, CONSTABLES, THE MILITARY, AND PRIVATE CITIZENS IN THE SUPPRESSION THEREOF.

THE TREASON FELONY ACT, 1848, THE CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875, THE RIOT (DAMAGES) ACT, 1886, WITH THE REGULATIONS THEREUNDER, AND THE TRADE DISPUTES ACT, 1906.

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Fourth Edition.

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PREFACE.

"In times of tranquillity men do not examine into their powers to suppress or prevent disorders which they do not foresee." The history of the events, the sequel to which was the trial of Mr. Kennett, Lord Mayor of London, in defending whom Erskine spoke the above words, affords a striking illustration of their truth; and as the first right of a citizen of this country is the enjoyment of public peace and order, and their preservation is his first duty, so should it be the care of every member of the community to inform himself of the legal rights, duties and liabilities, by which more especially the bonds of society are kept together, and the enjoyment of rational liberty and freedom of action are secured.

The object of the following pages is to facilitate the acquisition of this knowledge; to point out the nature of the more aggravated offences against the public peace, both at common law and as affected by statutes; to explain the powers entrusted to magistrates for their suppression, and consequently the duties incumbent upon them and the liabilities they incur by neglecting such duties; and also to

state the rights, duties and powers of members of the community, whether private persons, constables, special constables, or as belonging to the military force. In separate Parts will be found, as closely bearing upon the subject of public disturbances and their suppression, the Treason Felony Act, 1848, the Riot (Damages) Act, 1886, with the Regulations thereunder, the Conspiracy and Protection of Property Act, 1875, and the Trade Disputes Act, 1906.

The present Editors have followed in this Edition, without material alteration, the arrangement of the subject-matter adopted in the earlier Editions of this Work. It is hoped that the Case and Statute Law will be found to have been brought up to date. A decision under the Riot (Damages) Act, 1886, *i.e.*, the recent case of *Field* v. *Metropolitan Police Receiver*, Times Newsp., July 30th, 1907, is noted in Part V. The earlier pages in which it would have been cited had passed through the press before the judgment was delivered.

A. H. B.
L. W. K.

TEMPLE,
1*st August*, 1907.

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THE LAW RELATING TO RIOTS

AND

UNLAWFUL ASSEMBLIES.

PART I.

DEFINITIONS OF THE OFFENCE OF UNLAWFULLY ASSEMBLING.

It is said in a note to the definition of an unlawful assembly, given by the Criminal Code Bill Commissioners in their Report of 1879, which accompanied the Draft Criminal Code of 1879, that "the earliest definition of unlawful assembly is in the year-book 21 Hen. 7, 39," the passage there alluded to being the following:

"*Nota*, *per* Fineux, C.:—If one be in his house, and he hear that such an one will come to his house to beat him, he may well make assembly of the men of his friends and neighbours to assist him, and aid in the safe guarding of his person; but if one has been threatened that if he come to such a market, or into such a place, he will be beaten there, in that case he may not make an assembly of men to assist him, to go there in safeguard of his person, because he needeth not to go there, and he may have remedy by surety of peace; but a man's house is to him his castle and his defence, and where he properly should abide."

The note of the Commissioners above referred to upon this subject explains how the offence of an unlawful assembly originated, and is as follows:

"The definition of an unlawful assembly in Part VI. depends entirely upon the common law. The earliest definition of an unlawful assembly is in the year-book 21 Hen. 7, 39. It would seem from it that the law was first adopted at a time when it was the practice for the gentry who were on bad terms with each other to go to market at the head of bands of armed retainers. It is obvious that no civilised government could permit this practice, the consequence of which was at the time that the assembled bands would probably fight, and certainly make peaceable people fear that they would fight. It was whilst the state of society was such as to render this a prevailing mischief that the earlier cases were decided, and consequently the duty of not provoking a breach of the peace has sometimes been so strongly laid down as almost to make it seem as if it were unlawful to take means to resist those who came to commit crimes. We have endeavoured in section 84 to enunciate the principles of the common law, although in declaring that an assembly may be unlawful if it causes persons in the neighbourhood to fear that it will heedlessly and without reasonable occasion provoke others to disturb the peace tumultuously, we are declaring that which has not yet been specifically decided in any particular case. The clause as to the defence of a man's house has been inserted because of a doubt expressed on the subject. Forcible entry and detainer are offences at common law, and section 95, as we believe, correctly states the existing law" (*a*).

It is difficult perhaps to consider the above extract from the year-book in the light of a definition of an unlawful assembly, and it would be more accurate to

(*a*) See also Sir James Stephen's Hist. Cr. L., Vol. II., p. 385. The passage quoted from the year-book by the Commissioners is also mentioned (but somewhat differently expressed) in Hawk. P. C., Vol. II., Bk. I., c. 65, s. 10. See also upon this particular form of unlawfully assembling, 19 Vin. Abr., tit. "Riots," A., 5, 6; *R.* v. *Soley* (1707), 11 Mod. Rep. 115; 1 Russ. Cr. & M., 6th ed., 553, *per* HOLT, C.J. As to assembling and arming in defence of a man's close, see *R.* v. *Bishop of Bangor* (1796), 26 St. Tr. 523; Erskine's Speeches (1827), Vol. V., 177.

regard it as an instance in which an assembly becomes, under certain circumstances, unlawful.

It seems also that the above-quoted passage is not the earliest reference to this offence to be found in the year-books, for in Hudson's Treatise of the Court of Star Chamber (Collect. Jur., Vol. II., p. 84), is the following:

"It seemeth by Keble, 3 Hen. 7, that an assembly of men is not punishable, if nothing be done, unless the assembly be *in terrorem populi*." See 1 St. Tr. (N.S.) 434 n.

It is not necessary to enumerate the definitions of an unlawful assembly prior to those contained in Hawkins' "Pleas of the Crown," as it is obvious that the offence is of such a character that the constant change in the manners and customs of the country have demanded a development of the law applicable to public meetings and disturbances.

In Hawk. P. C., Vol. II., Bk. I., c. 65, s. 9 (7th ed.), occurs the following description of the offence of unlawfully assembling:

"An unlawful assembly, according to the common opinion, is a disturbance of the peace by persons barely assembling together with an intention to do a thing which, if it were executed, would make them rioters, but neither actually executing it, nor making a motion towards the execution of it. But this seems to be much too narrow a definition. For any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the King's subjects, seems properly to be called an unlawful assembly, as where great numbers, complaining of a common grievance, meet together, armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests, for no one can foresee what may be the event of such an assembly."

The above definition has been adopted with approval in many reported cases (*b*), and the authority of it has been recognised by Blackstone in his Commentaries, and also in Stephen's Commentaries (*c*).

In the case of *R.* v. *Vincent* (1839), 3 St. Tr. (N.S.), at p. 1081 ; 9 C. & P. 91, ALDERSON, B., thus described the offence of unlawful assembly :

"I take it to be the law of the land that any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquility and peace of the neighbourhood, is an unlawful assembly."

And to the same effect in the summing up of LITTLEDALE, J., in *R.* v. *Neale* (1839), 3 St. Tr. (N.S.) 1312 ; 9 C. & P. 431. The Court of Appeal in Ireland adopted the above quoted dictum of ALDERSON, B., in *O'Kelly* v. *Harvey* (1883), 15 Cox C. C., at p. 442 ; 10 L. R. Ir. 285.

The next definition to be noticed is that given by the Criminal Law Commissioners (*d*) in their 7th Report made in 1843, and it is as follows :

"Article 7. If three or more persons shall assemble, or being together, shall continue together for the common purpose of executing some unlawful and violent act, or shall assemble, or, being together, shall continue together for any purpose what-

(*b*) *R.* v. *Hunt* (1820), 1 St. Tr. (N.S.), at p. 434 ; 3 B. & Ald. 566 ; *R.* v. *Dewhurst* (1820), 1 St. Tr. (N.S.), at p. 597 ; *R.* v. *Vincent* (1839), 3 St. Tr. (N.S.) 1037 ; *R.* v. *Stephens* (1839), 3 St. Tr. (N.S.) 1189 ; *Beatty* v. *Gillbanks* (1882), 9 Q. B. D. 308 ; 46 J. P. 789 ; 51 L. J. M. C. 117 ; 15 Cox C. C. 138 ; 47 L. T. (N.S.) 194 ; 31 W. R. 275 ; *R.* v. *Graham and Burns* (1888), 16 Cox C. C. 420 ; 4 T. L. R. 212 ; *R.* v. *Clarkson and Others* (1892), 56 J. P. 375 ; 17 Cox C. C. 483 ; 66 L. T. 297 ; 8 T. L. R. 248.

(*c*) IV. Bla. Com. c. 11 s. 6 ; IV. Steph. Com. (14th ed.) 174 ; (9th ed.) 215 ; (7th ed.) 254.

(*d*) The Commissioners at this time were Messrs. Thomas Starkie, Bellendar Ker, Wightman, and Jardine.

soever, in such manner and under such circumstances of violence, threats, tumult, numbers, display of arms, or otherwise, as are calculated to create terror and alarm amongst the Queen's subjects, such persons shall be deemed to be guilty of an unlawful assembly."

The report of the Criminal Law Commissioners of 1843 came in 1879 under the consideration of the Criminal Code Bill Commissioners, and the last mentioned definition of unlawful assembly was then in effect adopted, with an addition which appears to be at variance with the case of *Beatty* v. *Gillbanks*, *ante*.

Article 84 of the Draft Code of 1879, as approved of by the Code Commissioners, is as follows :

"An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, in such a manner, or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear on reasonable grounds that the persons so assembled will disturb the peace tumultuously, *or will, by such assembly, needlessly and without any reasonable occasion, provoke other persons to disturb the peace tumultuously.* Persons lawfully assembled together may become an unlawful assembly if they conduct themselves with a common purpose, in such a manner as would have made their assembling unlawful if they had assembled in that manner for that purpose. An assembly of three or more persons for the purpose of protecting the house of any one of their number against persons threatening to break and enter such house in order to commit any indictable offence therein, is not unlawful (*e*).

The Commissioners at p. 20 of their Report, which accompanies the Draft Code, thus refer to that part of the definition which is printed in italics :

"In declaring that an assembly may be unlawful if it causes persons in the neighbourhood to fear that it will needlessly and without reasonable occasion provoke others to disturb the peace tumultuously, we are declaring that which has not been specifically decided in any particular case."

(*e*) See also 2 Steph. Hist. Cr. Law, 385.

It would seem that this part of the above quoted definition is in conflict with the judgment of the Divisional Court in the case of *Beatty* v. *Gillbanks*, *ante*, p. 4. There the appellants, who were officers and members of the Salvation Army, had assembled together for a lawful purpose, and were proceeding through the public streets; but with the knowledge gained from many previous occasions that there was good reason to expect a collision with an organised opposition band of persons known as the Skeleton Army, and with other persons antagonistic to themselves, and that fighting, stone-throwing, and general disturbance would ensue on that as on previous occasions. The appellants, being charged before justices with unlawfully and tumultuously assembling together in the public streets to the disturbance of the public peace, were severally bound in recognizances to be of good behaviour, a case being stated upon the point whether any offence had been committed by the appellants. FIELD, J., in delivering the judgment of the court, said:

"There is no doubt that they, and with them others, assembled together in great numbers, but such an assembly to be unlawful must be tumultuous and against the peace. As far as these appellants are concerned, there was nothing in their conduct when they were assembled together which was either tumultuous or against the peace. But it is said that the conduct pursued by them on this occasion was such as on several previous occasions had produced riots and disturbances of the peace and terror to the inhabitants, and that the appellants knowing, when they assembled together, that such consequences would again arise, are liable to this charge.

"Now, I entirely concede that every one must be taken to intend the natural consequence of his acts, and it is clear to me that if this disturbance of the peace was the natural consequence of the acts of the appellants, they would be liable, and the justices would be right in binding them over. But the

evidence set forth in the case does not support this contention ; on the contrary, it shows that the disturbances were caused by other people who were antagonistic to the appellants, and that no acts of violence were committed by them. . . . What has happened here is that an unlawful organization has assumed to itself the right to prevent the appellants and others from lawfully assembling together ; and the finding of the justices amounts to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition."

And CAVE, J., in expressing his opinion in conformity with that of FIELD, J., said :

"The meeting of the Salvation Army was for a purpose not unlawful. Was there an intention on their part to use violence ? If, though their meeting was in itself lawful, they intended, if opposed, to meet force by force, that would render their meeting an unlawful assembly, but it does not appear that they entertained any such intention."

It is impossible to pass over the case of *Beatty* v. *Gillbanks*, without referring to the criticism upon the decision then arrived at, made by LAW, L.C., in *O'Kelly* v. *Harvey*, (1883), 15 Cox C. C. 435 ; 10 L. R. Ir. 285.

"I frankly own," he says, "I cannot understand that decision, having regard to the facts stated in the special case, and which, with all deference to the learned judges who decided it, appeared to me to have presented all the elements necessary to constitute the offence known as 'unlawful assembly.' . . . . I have always understood the law to be that any needless assemblage of persons, in such numbers and manner and under such circumstances as are likely to provoke a breach of the peace, was of itself unlawful ; and this, I may add, appears to me the view taken by the very learned persons who revised the Criminal Code Bill in 1878."

It will be noticed that in paragraph N. of the case submitted by the justices, it was expressly found as a

fact that the Salvation Army intended to parade in procession through the principal streets, and to collect a large mob of persons to accompany them, that they had good reason to expect a collision with the Skeleton Army, and consequent stone-throwing and fighting, and that they intended to force their way through the streets and places as on previous occasions "in spite of any opposition."

"I confess," said LAW, L.C., referring to this particular paragraph of the special case, "I should have thought that this, too, was no bad description of an unlawful assembly." (*f*)

From the above quoted passage from the judgment of CAVE, J., that an intention on the part of the Salvation Army to "meet force by force, would render their meeting an unlawful assembly," it would appear that the Divisional Court in coming to a decision in *Beatty* v. *Gillbanks*, did so without full appreciation of the facts set out in the case submitted to them, for, as was pointed out by LAW, L.C., the justices expressly found as a fact that there was such an intention on the occasion in question. In *R.* v. *Clarkson and Others* (1892), *ante*, p. 4, nine members of the Salvation Army band were indicted for an unlawful assembly at Eastbourne. There had been disturbances between the crowd and the Salvation Army at Eastbourne on previous occasions, but there was no evidence that the defendants were aware of this. HAWKINS, J., directed the jury that to constitute an unlawful assembly it was essential that a breach of the peace should be involved, or that the public peace should be endangered as the probable result of such assembly carrying out or

(*f*) At p. 447 of 15 Cox C. C.

proceeding to carry out its object, and subsequently in delivering the judgment of the Court for Crown Cases Reserved (HAWKINS, WILLS, LAWRANCE, WRIGHT, and COLLINS, JJ.), said :

"It does not appear, and there was no evidence, that these nine defendants had the smallest knowledge of that which was said to have been occurring upon one or two previous occasions. They joined the contingent on the piece of waste land and no one has suggested that anything was said or done there by the members of the Salvation Army or by the bandsmen which would tend to lead any reasonable man to suppose that they intended to do anything which might lead to a commission of a breach of the peace. . . . Upon heading the band when it left the piece of waste land, he (the chief constable) had not given them any warning that their proceeding, walking peaceably through the streets, would inflame the people. . . . Now what is the evidence that they unlawfully did assemble to disturb the peace? We find none. I do not say that it was necessary that there should have been an intention to break the peace from the outset ; and I quite agree that if they, in the course of their progress along the streets, had formed such an intention and had done anything by which a breach of the peace was committed or which would have led to a breach of the peace, that that would have formed the subject-matter for an indictment. But there was nothing from the first to the last which ought to have led any reasonable man to have supposed that the acts of the bandsmen would have caused others to do acts so grossly unlawful as the acts of the crowd, or that they were likely to do anything unlawful or likely to lead to a breach of the peace."

It seems, therefore, difficult to view the case of *Beatty* v. *Gillbanks*, under all the circumstances, as of sufficient authority to qualify the statement of the law contained in the above quoted definition given by the Commissioners of 1879 (*g*), or to regard the conduct of the defendants in that case as not falling clearly within

(*g*) This definition does not appear to have been referred to in *Beatty* v. *Gillbanks*, but, as appears above, it was referred to in *O'Kelly* v. *Harvey*, and it was also referred to by HAWKINS, J., in *R.* v. *Clarkson and Others*.

the language of ALDERSON, B., in the before-mentioned case of *R.* v. *Vincent*, *ante*, p. 4.

Sir James Stephen, in his Digest of the Criminal Law (1877), p. 40; (1904), p. 55; thus defines the offence of unlawful assembly:

Art. 70. "An unlawful assembly is an assembly of three or more persons, (A) with intent to commit a crime by open force; or (B) with intent to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it (*h*). Illustrations:

(A) "Sixteen persons meet for the purpose of going out to commit the offence of being by night unlawfully upon land armed in pursuit of game. This is an unlawful assembly."

(B) "A., B., and C. meet for the purpose of concerting an indictable fraud. This, though a conspiracy, is not an unlawful assembly."

(C) "A., B., and C. having met for a lawful purpose, quarrel and fight. This, though an affray, is not an unlawful assembly."

(D) "A large number of persons hold a meeting to consider a petition to Parliament lawful in itself; but they assemble in such numbers, with such a show of force and organisation, and when assembled, make use of such language as to lead persons of ordinary firmness and courage in the neighbourhood to apprehend a breach of the peace. This is an unlawful assembly."

As an additional illustration, see *per* FITZGERALD, J., in *R.* v. *M'Naughten and Others* (1881), 14 Cox C. C. 576. "If persons assemble to obstruct the officers of the law all parties so assembling are guilty of an unlawful assembly, whether a riot takes place or not," as, for instance, assembling to resist the due execution of

(*h*) Bk. I., Vol. II., Hawk. P. C., c. 65, 7th ed.; Bro. Abr. "Riots"; Vin. Abr. "Riot"; Lambard, Chap. V., 172—184; and Dalton, 310—314.

a search warrant legally issued: *R.* v. *Roberts and Others* (1849), 4 Cox C. C. 145.

In the case of *R.* v. *Vincent* (1839), 3 St. Tr. (N.S.) at p. 1349; 9 C. & P. at p. 94; arising out of disturbances in Newport, the charge of ALDERSON, B., to the grand jury at the Monmouth Summer Assizes is set out, and in the course of it the learned judge, after pointing out the accuracy of Hawkins' definition (*i*) given above, quotes with approval the language of BAYLEY, J., in *R.* v. *Hunt* (1820), 1 St. Tr. (N.S.) 171: "If the persons who assemble together say, 'we will have what we want, whether it be according to law or not,' a meeting for such a purpose, however it may be masked, if it be really for a purpose of that kind, is illegal. If a meeting from its general appearance, and from all the accompanying circumstances, is calculated to excite terror and alarm and consternation, it is generally criminal and unlawful. These are, as I take it, the clear principles of law."

ALDERSON, B., in the course of the same charge to the grand jury, further said in reference to the case of Vincent:

"You will investigate the circumstances under which the assembly took place, whether the individuals who presided and were present were so by previous concert, or by accidentally having met, and if they met by previous concert, you will inquire whether they have met at unseasonable hours of the night, if they have met under circumstances of violence and danger, if they have been armed with offensive weapons or used violent language, if they have proposed to set the different classes of society at variance the one with the other, and to put to death any part of her Majesty's subjects. If any, all, or most of these things should appear before you, there will, I think, be little difficulty in saying that an assembly of such persons, under such circumstances, for such purposes, and using such language, is a dangerous one, which cannot be tolerated in a country

(*i*) *Ante*, p. 3.

governed by laws (*k*), and it is but doing to others as you would they should do unto you, to repress meetings of that description: because what right have any persons to do that which produces terror, inconvenience, and dismay among their fellow subjects? There is no doubt that the people of this country have a perfect right to meet for the purpose of stating what are, or even what they consider to be, their grievances. That right they always have had, and, I trust, always will have; but in order to transmit that right unimpaired to posterity, it is necessary that it should be regulated by law and restrained by reason. Therefore, let them meet, if they will, in open day, peaceably and quietly, and they would do wisely when they meet to do so under the sanction of those who are the constituted authorities of this country. To meet under irresponsible presidency is a dangerous thing; nevertheless, if when they do meet under that irresponsible presidency, they conduct themselves with peace and tranquility and order, they will perhaps lose their time, but nothing else. They will not put other people into alarm, terror, and consternation; they will probably in the end come to the conclusion that they have acted foolishly. But the constitution of this country does not (God be thanked) punish persons who, meaning to do that which is right in a peaceable and orderly manner, are only in error in the views which they have taken on some subject of political interest."

On April 27th, 1848, PATTESON, J., in charging a grand jury of Middlesex, thus described and discussed the offence of unlawfully assembling (*l*):

"It is difficult to lay down by any precise legal definition what constitutes an unlawful and riotous meeting; but it may be safely stated that an assembly of great numbers of persons, which from its general appearance and accompanying circumstances is calculated to excite terror, alarm, and consternation, is generally criminal and unlawful. All persons who form an assembly of this kind, disregarding its probable effect and the alarm and consternation that are likely to ensue, and all who give countenance and support to it, are criminal parties. The people of this country are undoubtedly entitled to assemble

(*k*) The portion of the learned judge's charge set out above was quoted by him nine years later in summing up to the jury in *R.* v. *Rankin and Others* (1848), 7 St. Tr. (N.S.), at p. 787, *post*, p. 15.

(*l*) This and the following extract were courteously furnished to the former editor of this work, Mr. Edward Wise, by the learned judge.

in a peaceable manner for the real and *bonâ fide* purpose of discussing any subject of interest, not having itself any criminal tendency, or for the purpose of preparing proper and respectful petitions to her Majesty, or to either House of Parliament; and such meetings, having really such objects, and being peaceably and quietly conducted, cannot be said to be unlawful and riotous.

"Whether any particular meeting be of a lawful or unlawful description must depend on the circumstances under which it is held, the manner in which it is brought together, and the conduct and demeanour of those who attend it. These, being questions of fact, must be submitted in all cases to the judgment and determination of a jury, first a grand jury, and then a petty jury if a bill of indictment be found true; and it is not possible for a judge to lay down, as matter of law, the precise boundary between a lawful and unlawful assembly."

And on June 2nd, 1848, PATTESON, J., in charging the grand jury of Middlesex, summoned in that term, again dealt at length with the subjects of riot and unlawful assembly:

"When I had lately the duty of addressing a grand jury in this court, on the 27th of April last, I thought it right to point out the abhorrence in which the law of England has ever held riotous and tumultuous assemblages of the people, considering most wisely that it is impossible for any man to foresee what consequences may ensue from such assemblages, even when the object of those who call them together may have been defined and moderate and even lawful; since the excitement and ferment necessarily attending them is most likely to lead the multitude eventually to lose sight of the original intention, and to rush headlong into the commission of violence and outrages, which were never contemplated.

"This is true with regard to all such assemblages even in open day; how much more true is it when such assemblages are held *at night*, when quiet and peaceable discussion is manifestly impossible, and when it is scarcely possible for any one, with the most charitable and indulgent views, to conceive that anything short of intimidation by the exhibition of physical force can be intended.

"The essence of criminality in such cases is the terror and alarm with which the peaceable and quiet subjects of her Majesty must almost necessarily be affected, even those who

are endowed with firmness and resolution; and, therefore, I have no hesitation in saying that such tumultuous meetings *at night* can hardly, under any circumstances, be otherwise than criminal. I speak of the general law of the land applicable to all places in her Majesty's dominions, and of the proceeding by indictment, with which alone you can have to do, against persons forming part of such meetings, whether as leaders and instigators of them, or as idle and sometimes merely curious spectators, joining in such meetings, without considering that, by their so doing, they are swelling the apparent numbers of them, and increasing, however unwittingly, their powers of mischief.

"There are particular statutes giving extraordinary powers, in this and other large towns, to the magistrates and police, which happily are found sufficient in general to repress such disorders; but it may be that proceedings by indictment may become either necessary or advisable; and I feel it my duty to warn all persons, that the law is not so feeble and ineffectual as to permit the country to be kept in a perpetual state of alarm and apprehension lest some fearful outbreak should take place, but that if the law must be put into action, it will, by severely punishing those who may be apprehended in the commission of such criminal acts, hold out an example to deter others from the like offences.

"Great and meritorious as have been and are the exertions of those who are called upon specially and come forward to preserve the peace, it is not to be endured that those many loyal subjects should be harassed by repeated calls on their services, and that those who for some sinister objects of their own render such calls imperative, should escape without the punishment due to their misconduct (*m*). If, therefore, any such charges should be brought before you, you will have to inquire into all the circumstances laid before you, and to say, as reasonable and sober-judging men, whether such meetings were calculated to inspire terror and alarm into the inhabitants of the places where they were held; and if they were, most unquestionably they would be unlawful, and the proper subject of criminal proceedings against all persons joining in them.

"I have no reason to think that any such charges will be preferred; and my object in making the statement to you is rather to point out what the law holds to be criminal by way of warning, than to instruct you in the performance of your duties on this particular occasion. I have, on a former occasion,

(*m*) This charge was quoted by the Attorney-General (Sir John Jervis) in *R.* v. *Fussell* (1848), 6 St. Tr. (N.S.) 723.

stated what means the law has provided for repressing such tumults, independently of proceedings by indictment, which I will not now repeat, further than by saying that it is the bounden duty of all persons to lend their aid towards the preservation of order, both by the common and general law of the land, and by particular statutes; and I trust that, under God's blessing, these means will be effectual both to secure to us the preservation of order, and of the invaluable benefits we enjoy under the laws and constitution of the realm, and of the improvement of those laws and that constitution, as from time to time may become requisite, by the only recognised, safe, and legitimate authority of Parliament."

On July 5th, 1848, Wilde, C.J., in *R.* v. *Fussell* (1848), 6 St. Tr. (N.S.), at p. 764, says:

"If it should appear to you that this meeting was called and got up, and that persons were encouraged to meet for the purpose of speaking, and others for the purpose of hearing, seditious language—language exciting such persons to violence and to resistance of the law, there will be no doubt that that meeting is an illegal meeting, and that all who partook in the act of calling that meeting and took part in these proceedings, which had such a tendency, will be guilty of attending an illegal public meeting."

In December, 1848, Alderson, B., in the course of his summing up to the jury in *R.* v. *Rankin and Others* (1848), 7 St. Tr. (N.S.), at p. 788, after quoting his charge in *R.* v. *Vincent*, *ante*, proceeds:

"Lord Chief Justice Tindal says (*u*) the offence consists in exciting large masses of the people, by means of seditious and inflammatory speeches, to commit acts of violence and break the peace. Meetings of these sorts are illegal, and, if at any meeting of a large body speeches of that sort are made, they themselves constitute the meeting an unlawful assembly; for it is the most dangerous thing in the world, where large bodies of people, inflammable as they must necessarily be, are collected together in large numbers, that they should be excited by persons making violent speeches to them; for no one can tell how far such assemblies may go when once they are

(*u*) At the Stafford Special Commission, 1842, *post*.

excited . . . No doubt such bodies of people may meet together for a peaceable purpose. It were better, no doubt, that they met under the sanction of the authorities . . . . But it is not necessary that it should be so, if the meeting conducts itself in a proper manner ; but undoubtedly all such irresponsible chairmanship is very dangerous and does continually lead to inconvenience and dangers. I do not say it is illegal to do it, I say, as a matter of prudence, it would be better that it were avoided " (*o*).

An unlawful assembly then is any meeting whatsoever of great numbers of people with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies among the King's subjects. It is not the opinion of every alarmist that is to determine what is dangerous to the public peace ; but the question in each case will be, whether rational and firm men, looking at all the circumstances, the time, place, and manner of meeting, and also the state of the country at the moment, would have reasonable ground for apprehending danger to the security of persons and property (*Redford* v. *Birley* (1822), 1 St. Tr. (N.S.) 1071 ; 3 Star. N. P. 76 ; *R.* v. *Hunt* (1820), 1 St. Tr. (N.S.) 171 ; 3 B. & Ald. 566 ; *R.* v. *Vincent* (1839), 3 St. Tr. (N.S.) 1037 ; 9 C. & P. 91, 275 ; and *R.* v. *Neale* (1839), 3 St. Tr. (N.S.) 1312 ; 9 C. & P. 431). The question of "terror" will have subsequently to be considered in dealing with that element in the offence of riot (*p*).

(*o*) See also PATTESON, J., in *R.* v. *Stephens* (1839), 3 St. Tr. (N.S.) 1189 ; PARKE, B., in *R.* v. *Williams and Vernon* (1848), 6 St. Tr. (N.S.), at p. 779 ; and WILDE, C.J., in *R.* v. *Ernest Jones* (1848), 6 St. Tr. (N.S.), at p. 816.

(*p*) The authorities on unlawful assembly will also be found collected in a note to *R.* v. *Hunt* (1820), 1 St. Tr. (N.S.), at p. 434.

INSTANCES OF UNLAWFUL ASSEMBLIES.

It is proposed now to notice some of the many forms in which unlawful assemblies exist. Some assemblies and combinations are expressly forbidden by statute, while others become illegal by reason of the objects which the assembled persons have in view, and even the great numbers comprising the assembly, coupled perhaps with a disturbed state of feeling in the country, will turn a meeting convened for lawful objects into an unlawful assembly.

It may be well to point out here in what an unlawful assembly differs from a riot, before the definitions of the latter offence are mentioned:

"An unlawful assembly differs in this respect from a riot, that a riot must go forward to the perpetration of some act which the unlawful assembly is calculated to originate and inspire. Something must be executed in a turbulent manner to constitute a riot (*q*).

"If the enterprise be of a general and public nature, it savours of high treason, and there is no doubt that if you find persons assembled together by delegates dispersed from any central jurisdiction in this kingdom, and those persons so meeting together in consequence of a delegation from a central body, commit any act of violence for the purpose of carrying into effect any general political purpose, they run the risk of being charged with high treason."

The question of the public or private nature of the enterprise will be subsequently mentioned when dealing with the offence of riot.

Generally speaking, therefore, an unlawful assembly is the inception of a riot. In some cases the act of

(*q*) *Per* ALDERSON, B., in *R.* v. *Vincent* (1839), 3 St. Tr. (N.S.) 1037; 9 C. & P. 94; see also *R.* v. *Frost* (1839), 4 St. Tr. (N.S.) 85; 9 C. & P. 129, and s. 79 of Draft Code of 1879 as to the crime of treason.

assembling together in furtherance of a design to bring about a general political change by open force might amount to an overt act of high treason.

SEDITION.

An assembly lawfully convened may become an unlawful assembly by reason of seditious words being spoken thereat of such a nature as are likely to produce a breach of the peace (*r*). In the Draft Criminal Code of 1879, s. 102, the law as to seditious intentions is summarised, and Sir J. Stephen's statement of the law as to sedition in his "Digest" (Arts. 91 and 93) was quoted with approval by CAVE, J., in the case arising out of the Trafalgar Square riots in 1886 (*r*).

The general principles as to seditious speeches are set forth in the subjoined extracts. TINDAL, L.C.J., in his charge at the Stafford Special Commission in 1842, reported in 4 St. Tr. (N.S.) at p. 1413, says:

"There is another description of offence which will probably be submitted to your consideration, namely, the exciting and encouraging large masses of the people, by means of seditious and inflammatory speeches, to commit acts of violence and to break the peace. If such charges are brought forward, it must be left to your own good sense to distinguish between an honest declaration of the speaker's opinion upon the political subjects on which he treats,—a free discussion on matters that concern the public, as to which full allowance should be made for the zeal of the speaker, though he may somewhat exceed the just bounds of moderation, and on the other hand, a wicked design by inflammatory statement, and crafty and subtle arguments, to poison the minds of the hearers, and render them the instruments of mischief. He that addresses himself to a crowded auditory of the poorer class, without employment or occupation, and brooding at the time over their wrongs, whether

(*r*) *R.* v *Burns and Others* (1886), 16 Cox C. C. 355. See *R.* v. *Sullivan* (1868), 11 Cox C. C. 44, *per* FITZGERALD, J., at p. 58, and the 5th Report Criminal Law Commissioners (1840).

real or imaginary, will not want hearers ready to believe, and apt followers of mischievous advice. You will consider, therefore, the language that is employed on such an occasion. If it consists of broad and bold assertion, unfounded in fact; if, in discussing religious topics, you find the speaker endeavouring to be sprightly and facetious on those subjects which make wise and good men serious; if, instead of argument, he deals only in sneers and sarcasm,—it will be for yourselves, to say whether, under such circumstances, the party charged with the offence is an honest but mistaken man, or whether he is wickedly intending to bring the religion, laws, and government of the country into contempt, and to teach the hearers to despise all those institutions which it is their duty to hold in respect and veneration."

In *R.* v. *Fussell* (1848), 6 St. Tr. (N.S.) at p. 764, WILDE, C.J., says:

"The defendant is charged with having uttered certain expressions. There has been a discussion as to whether these expressions amount to a seditious speaking or not. It strikes me that whatever may be the name which is given to that style of speaking, if these expressions are proved and believed by you to have been uttered with the intention of producing hatred and contempt of the institutions of the country, and of inducing to unlawful resistance, they are unlawful, and he who uttered them is liable to be punished."

CRAMPTON, J., in charging the Dublin grand jury on April 15th, 1848 (reported in 6 St. Tr. (N.S.) 591), says:

"The term sedition is a comprehensive term, and seems to include all those attempts to disturb the public peace which come short of high treason, but the natural tendency of which is to excite insurrection and rebellion against the crown and the government . . . Seditious writings and speeches, though these appear to terminate in words, are often more dangerous than the musket or the sword. An armed individual can do but individual injury, but a seditious speech, and above all a seditious press, may stir up thousands and tens of thousands to combine for the destruction of the commonwealth. In such writings and speeches liberty is always the pretence. . . ." (*s*)

(*s*) See also Lord ABINGER'S charge to the grand jury at Chester (1842), 4 St. Tr. (N.S.) 1119; reference may also be made upon this

Meetings to carry out any conspiracy of a public nature would obviously be within the prohibition of the law; thus, in the case of *O'Connell* v. *R.* (1844), 5 St. Tr. (N.S.) 1; 11 Cl. & F. 15; 9 Jur. 25, the judges were unanimous in holding that the agreeing of divers persons together to raise discontent and disaffection amongst the liege subjects of the Queen, to stir up jealousies, hatred, and ill-will between different classes of the Queen's subjects, and especially to promote among the Queen's subjects in Ireland feelings of ill-will and hostility towards the Queen's subjects in other parts of the United Kingdom, and especially in England, were agreements to effect purposes in manifest violation of the law. It was also agreed that a combination between many persons to diminish the confidence of her Majesty's subjects in Ireland in the general administration of the law therein, or an agreement to bring into hatred and contempt the tribunals by law established in Ireland for the administration of justice, was illegal (*t*).

TUMULTUOUS PETITIONING.

An Act of the Restoration (13 Car. 2, stat. 1, c. 5, s. 2) against "tumults and disorders upon pretence of preparing and presenting public petitions or other addresses to his Majesty or the Parliament," still exists and enacts:

That not more than twenty names shall be signed to any petition to the King or either House of Parliament for any

subject to *R.* v. *Frost* (1793), 22 St. Tr. 471; *R.* v. *Winterbotham* (1793), 22 St. Tr. 823; *R.* v. *Binns* (1795), 26 St. Tr. 595; *R.* v. *Ernest Jones* (1848), 6 St. Tr. (N.S.) 783; *R.* v. *O'Brien* and *R.* v. *Meagher* (1848), 6 St. Tr. (N.S.) 571; *R.* v. *M'Donall* (1848), 6 St. Tr. (N.S.) 1127; and *Ex parte Seymour and Davitt* (1883), 15 Cox C. C. 242.

(*t*) This case was alluded to, and the law of conspiracy fully discussed in *R.* v. *Parnell* (1881), 14 Cox C. C. 508.

alterations of matters established by law in church or state, unless the contents thereof be previously approved, in the country, by three justices, or the majority of the grand jury at the assizes or quarter sessions; and in London by the Lord Mayor, aldermen, and common council, and that no petition shall be delivered by a company of more than ten persons on pain, in either case, of incurring a penalty not exceeding 100*l.* and three months' imprisonment.

This statute was (notwithstanding a contention that the Bill of Rights, 1 Will. & Mary, sess. 2, c. 2, s. 1, art. 5, had repealed it) expressly recognised as law by Lord MANSFIELD at the trial of Lord George Gordon (1781), 21 St. Tr. 646; Doug. 571, and was also called in aid on the occasion of the great Chartist meeting on April 10th, 1848, shortly before the passing of the Treason Felony Act (1848) (11 Vict. c. 12) (*u*). It is stated in 2 Chitty, Cr. Law, 508, that no prosecution has taken place under this statute.

MEETINGS WITHIN A MILE OF WESTMINSTER HALL.

By an Act of the Regency (57 Geo. 3, c. 19, s. 23) it is forbidden to:

Convene or give notice of convening any meeting consisting of more than fifty persons, or for any number of persons exceeding the number of fifty to meet in any street, square, or open space in the city or liberties of Westminster or county of Middlesex, within the distance of a mile from the gate of Westminster Hall (except such parts of the parish of St. Paul's, Covent Garden, as are within such distance) for the purpose of considering of or preparing any petition, complaint, remonstrance, or other address to both or either House of Parliament, for alteration of matters in church or state, on any day on which the two Houses or either House of Parliament shall meet or sit, nor on any day on which the courts shall sit in Westminster Hall (*x*).

(*u*) See *post*.

(*x*) This Act does not affect registered friendly societies transacting the business of the society (Friendly Societies Act, 1896, s. 32 (1)).

There is a proviso that this enactment shall not extend to any meeting for the election of members of Parliament, or to persons attending upon the business of either House of Parliament, or any of the courts of law.

UNLAWFUL DRILLING.

The statute 60 Geo. 3 & 1 Geo. 4, c. 1, s. 1, after reciting that "in some parts of the United Kingdom men clandestinely and unlawfully assembled have practised military training and exercise to the great terror and alarm," etc., prohibited meetings for military drilling and training without the permission of the King, Lord Lieutenant, or two justices of the peace. By s. 2 of the statute justices and constables are empowered expressly to disperse any such meeting (*y*). This matter was discussed in *Redford* v. *Birley* (1822), 1 St. Tr. (N.S.), p. 1215, by HOLROYD, J., and by ABBOTT, C.J., at p. 1262.

Drilling for the purpose of going to a meeting with ease and regularity is lawful, but drilling for the purpose of overawing the Government of the kingdom would amount to high treason, and drilling for the purpose of securing attention to seditious speeches, and giving confidence to persons disposed to sedition, is a misdemeanor (*R.* v. *Hunt* (1820), 1 St. Tr. (N.S.): BAYLEY, J., at p. 446).

UNLAWFUL SOCIETIES.

By the Unlawful Societies Act, 1799 (39 Geo. 3, c. 79), s. 1, certain specified societies of real or supposed

(*y*) See as to this statute *R.* v. *Hunt* (1848), 3 Cox C. C. 215; *Gogarty* v. *R.* (1849), 3 Cox. C. C. 306. These meetings would no doubt be held to be unlawful at common law.

seditious or treasonable nature are prohibited. The second section of the same statute is aimed against societies the members of which take unlawful oaths, such societies being declared unlawful combinations and confederacies. By the Seditious Meetings Act, 1817 (57 Geo. 3, c. 19), s. 25, societies taking unlawful oaths within the meaning of 37 Geo. 3, c. 123, or 52 Geo. 3, c. 104 (relating to the administering or taking unlawful oaths), and persons becoming members of such societies, are to be deemed guilty of unlawful combinations within 39 Geo. 3, c. 79. Declarations approved by two justices, lodges of Freemasons where there is a certificate of registry, and meetings of Quakers were excepted from the operation of these statutes, as by the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 32 (1), are registered friendly societies transacting their proper business. By 9 & 10 Vict. c. 33, no prosecution under 39 Geo. 3, c. 79, or 57 Geo. 3, c. 19, is to be commenced except under the authority of the Attorney-General.

Although several of the provisions of the above-mentioned statutes are still unrepealed, it is believed that the societies aimed at by them have practically ceased to exist. It has not therefore been considered necessary to further discuss their provisions.

Forcible Entry and Detainer.

A forcible entry or detainer is committed by violently taking or keeping possession of lands and tenements with menaces, force, and arms, and without the authority of the law (*z*). In course of time various statutes were

(*z*) 4 Bl. Com. 148. As to this offence at common law, see *R.* v. *Wilson* (1799), 8 T. R. 357, and *Taunton* v. *Costar* (1797), 7 T. R. 431; 1 Russ. Cr. & M., 6th ed., 717; Steph. Dig. of Crim. Law, p. 61.

passed dealing with the offence, and having for their object the restraint of persons from having recourse to violent methods of doing themselves justice, and proceedings for the offence are more commonly taken under these statutes than at common law, for a writ of restitution and damages may under them be awarded to the prosecutor.

The first of these statutes is 5 Rich. 2, stat. 1, c. 8, providing that none shall make entry into lands but in case where entry is given by the law; "and in such case not with strong hand nor with multitude of people, but only in peaceable and easy manner." The proceedings thereunder were by indictment and it will be seen only dealt with "forcible entries." The next statute was 15 Rich. 2, c. 2, giving justices of the peace power to commit offenders to prison in cases of forcible entry, and imposing upon the sheriff the duty of assisting the justice with force. The defects of these early statutes were remedied by 8 Hen. 6, c. 9, s. 3, under which justices had power to deal with forcible detainers and forcible entries. Subsequent statutes dealing with these offences are 31 Eliz. c. 11, and 21 Jac. 1, c. 15. It is not within the scope of the present subject to discuss these statutes, they are fully commented on and the cases decided in reference to them noticed in 1 Russ. Cr. & M. (6th ed.) pp. 717—730 (*a*).

(*a*) Recent cases upon the statutes are *Lows* v. *Telford* (1876), 1 App. Cas. 414; 40 J. P. 741, 771; 45 L. J. Ex. 613; *Edwick* v. *Hawkes* (1881), 18 Ch. D. 199; 50 L. J. Ch. 577; 45 L. T. (N.S.) 168; *Beddall* v. *Maitland* (1881), 17 Ch. D. 174; 50 L. J. Ch. 401; 44 L. T. (N.S.) 248; *Scott* v. *Brown* (1884), 49 J. P. 226; 51 L. T. (N.S.) 746; *Jones* v. *Foley* (1891), 1 Q. B. 730; 55 J. P. 521; *R.* v. *Fraser* (1895), C. C. C. Sess. Papers, 17; and *R.* v. *Soutter* (1889), Times, Nov. 15th. See also 1 Hawk. P. C., c. 28, s. 3, 8th ed., and 37 Sol. J., pp. 791, 820, 837.

TRADE DISPUTES.

The Conspiracy and Protection of Property Act, 1875, and the Trade Disputes Act, 1906 (*b*), deal with combinations and acts of intimidation in furtherance of trade disputes, the former Act giving justices summary powers of dealing with offenders. See also, as to this subject, the observations of TINDAL, L.C.J., in his charge to the grand jury of Stafford (Car. & M. 661, and *post*).

SMUGGLING.

By the Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 10, it is provided that:

All persons, to the number of three or more, who shall assemble for the purpose of unshipping, landing, running, carrying, or concealing, or having so assembled, shall unship, etc., any spirits or tobacco, or any prohibited, restricted, or uncustomed goods, shall forfeit a penalty not exceeding 500*l*., nor less than 100*l*.

And s. 189 of the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), enacts that:

"Every person who shall by any means procure or hire . . . any person or persons to assemble for the purpose of being concerned in the landing or unshipping or carrying, conveying or concealing any goods which are prohibited to be imported, or the duties for which have not been paid or secured, shall be imprisoned for any term not exceeding twelve months; and if any person engaged in the commission of any of the above offences be armed with firearms or other offensive weapons, or whether so armed or not be disguised in any way, or being so armed or disguised shall be found with any goods liable to forfeiture under the Customs Acts within five miles of the sea coast or of any tidal river, shall be imprisoned with or without hard labour for any term not exceeding three years" (*c*).

(*b*) 38 & 39 Vict. c. 86 and 6 Edw. 7, c. 47. See these statutes in full, *post*.

(*c*) See as to these sections the criticisms of Sir James Stephen, Dig. Crim. Law (1877), 44; (1904) 58; s. 10 of the Act of 1879 replaces s. 188 of the Act of 1876. See also Arch. Crim. Pl., 23rd ed., p. 1015.

RIDING OR GOING ARMED.

There are several ancient statutes relating to this subject, among which are 25 Edw. 3, stat. 5, c. 2; 7 Edw. 1, stat. 1; 2 Edw. 3, c. 3; 1 Will. & Mary, sess. 2, c. 2.

In *Rex* v. *Meade* (1903), 19 T. L. R. 540, the defendant, who went to a house and deliberately fired a revolver in the direction of a room generally occupied by his brother, with whom he had had a quarrel, was convicted on an indictment containing a count under 2 Edw. 3, c. 3, and a count under the common law (*d*).

ROUT AND RIOT.

Having given the definitions of the offence of unlawful assembling, and some instances of unlawful assemblies, it is proposed to notice the definitions of the kindred offences of rout and riot. These two offences, it will be perceived, are frequently only developments of the lesser offence of unlawful assembly, for the same congregation of persons may at one time be an unlawful assembly, at another a rout, and at another a riot, either at common law or by the provisions of some statute.

DEFINITIONS OF ROUT.

The offence of rout is thus described by Hawkins (*e*):

"A rout seems to be, according to the general opinion, a disturbance of the peace by persons assembling together with an intention to do a thing which, if it be executed, will make

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(*d*) See also *Knight's Case* (1686), 3 Mod. Rep. 117; and also see *post*.

(*e*) Hawk. P. C. Vol. II., Bk. I., c. 65, s. 8, 7th ed.

them rioters, and actually making a motion towards the execution thereof. But by some books the notion of a riot is confined to such assemblies only as are occasioned by some grievance common to all the company ; as the inclosure of land in which they all claim a right of common, etc. However, inasmuch as it generally agrees with a riot as to all the rest of the above-mentioned particulars requisite to constitute a riot, which have been already fully explained, except only in this that it may be a complete offence without the execution of the intended enterprise, it seems not to require any further explication."

The Criminal Law Commissioners in their 7th Report (1843), Art. 6, give the following definition of a rout:

"If three or more persons shall assemble, or being together shall continue together for any such common purpose as is essential to constitute a riot, and shall use any endeavour to execute such purpose, such persons shall be deemed to be guilty of a rout, although such purpose be not executed either wholly or in part."

And Sir James Stephen in his Digest of Criminal Law, Art. 76, says :

"A rout is an unlawful assembly which has made a motion towards the execution of the common purpose of the persons assembled" (*f*).

Some of the more ancient authorities limited a rout to such assemblies only as are formed with a view to execute a design common to all the company, as the inclosure of land in which all of them claim rights of common, etc. But by all modern text-writers it is described to be a disturbance of the peace, by persons assembling together with an intention to do a thing, which if it be executed will make them rioters, and actually make a motion towards the execution of their

(*f*) Art. 76, p. 56, 6th ed.

purpose. Mr. Justice HOLROYD, in the case of *Redford* v. *Birley* (*g*), says :

"A rout or routous assembly is where persons come for some unlawful purpose, intending to do something in violence, but do not go to the full extent or take any actual step for accomplishing their purpose."

The offence of rout, though mentioned in the books, is but rarely the subject of enquiry in courts of law, and when its relation to riot on the one hand, and unlawful assembly on the other, is recollected, any further notice of it appears unnecessary.

DEFINITIONS OF RIOT.

Definitions of the offence of riot, prior to those given in Hawkins' Pleas of the Crown, are to be found in Dalton's County Justice, Coke's Institutes, and elsewhere, but from the narrowness of their scope, and the fact that Hawkins' definitions have received such frequent recognition and approval in courts of law it seems unnecessary to do more than merely refer to the earlier authorities. Hawkins (*h*) thus describes the offence of riot :

"A riot seems to be a tumultuous disturbance of the peace by three persons or more assembling together of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful" (*h*).

The following is taken from the 7th Report of the Commissioners on Criminal Law (1843), Art. 1, p. 172,

(*g*) (1822), 3 Stark. N. P. 118 ; 1 St. Tr. (N.S.) 1071.
(*h*) Bk. I. Vol. II., Hawk. P. C., c. 65, s. 1, 7th ed. The earlier authorities will be found cited in the margin.

and as a definition of the offence of riot may be usefully compared with that last given, as it will be noticed that the Commissioners omit a limitation retained by Hawkins as to the "private nature" of the enterprise :

"If three or more persons shall assemble, or being together shall continue together, for the common purpose of executing some unlawful and violent act, or of executing any act whatsoever, in such manner and under such circumstances of violence, threats, tumult, numbers, display of arms or otherwise, as are calculated to create terror and alarm amongst the Queen's subjects, and shall in either case wholly or in part execute such purpose, such persons shall be deemed guilty of a riot."

Public or Private Nature of Enterprise.

The Report of the Commissioners of 1843 refers to a previous report made by them in 1840 (*i*), as containing the reasons of expediency which prompted the omission of any reference to the nature of the enterprise.

The Commissioners thus expressed their views :

"On this important subject (that of the law of tumultuous assemblies), however, the law of England appears to us to be defective ; many of its rules, as derived from the manners of feudal times, being unsuitable to the habits of civilised people, and frequently founded upon forced constructions of the ancient statute law, quite inconsistent with modern rules of interpretation. The line of distinction drawn by our law between the crime of high treason and riots, routs, and unlawful assemblies, is the cause of much inconvenience in practice, and is suggested by obsolete doctrines respecting the royal prerogative and offences against the State, which are unsupported by reason or principle. By the common law of England the injury or grievance complained of, and intended to be remedied by those who are parties to a riot, rout, or unlawful assembly must relate to some *private* quarrel only, that is, to cases in which the

(*i*) This report is known as the 5th Report, and the extract is taken from p. 90, "Prefatory Remarks on Offences against Public Peace."

interests or disputes of individuals only, or of distinctly limited classes are concerned. It is stated as reason for this doctrine that wherever the object of the tumultuous assembly is to redress public grievances, such as to reform religion, or remove evil counsellors from the King, the attempt with force and numbers to execute such object amounts to high treason in the article of levying war, under stat. 25, Edw. 3, stat. 5, c. 3, and therefore as the misdemeanor merges in the higher offence it is not punishable as a mere riot. The distinction therefore between enterprises of a *public* nature and those whose object is *private* is derived from very early times, and, from the cases alluded to in the Statute of Treasons, seems to have been established when acts of violence by bodies of armed men against individuals, arising from private malice were matters of common occurrence. Mr. Justice FOSTER, who has considered those parts of the criminal law upon which he treats with much more attention to principle than any other practical writer, says (*k*):— 'Insurrections in order to throw down *all* enclosures, to alter the established law or change religion, to enhance the price of *all* labour, or to open *all* prisons—all risings in order to effect these innovations of *a public and general concern by an armed force* are in construction of law high treason within the clause of levying of war; for though they are not levelled at the person of the King they are against his *royal Majesty*, and besides they have a direct tendency to dissolve all the bonds of society and to destroy all property and all government too, by numbers and armed force.' The distinction thus deduced from such times antecedent to the Statute of Treasons, and continued through five centuries notwithstanding the total change of our national circumstances, is wholly inapplicable to the present state of society. But besides the practical inexpediency of such a state of the law, we consider the principle upon which it is founded to be fundamentally erroneous. That principle is the doctrine of constructive treason in its most obnoxious shape; it is interpreting the actions of men by technical rules, and inferentially imputing to parties accused of crimes, motives and objects which in truth they never entertained, in order to enhance the quality of the offence and extend the measure of punishment. In this respect it is repugnant to all just notions of criminal law. Where the law of high treason ends the law of tumultuous assemblies begins, and if the limits of the former are restricted so as to exclude all constructive treasons (which we think ought to be the case), it is obvious that the boundaries

(*k*) Foster's Crown Cases and Discourses, p. 211.

of the latter must be proportionately extended. On this account, we have thought it proper on the present occasion to give the law in the 'Digest,' nearly as we find it laid down by the most approved authorities, merely omitting the distinction between *private* and *public* enterprises, in conformity with the modern practice, and for the reasons we have above suggested" (*l*).

It may be added that the Commissioners, in thus omitting part of Hawkins' definition, did not "in any way throw doubt upon the accuracy of it, but considered it inexpedient to limit the object of a riotous assembly to something of a *private* nature."

The descriptions of this offence given by Blackstone in his Commentaries (*m*), following in the main Coke's statement of the law and those contained in Stephen's Commentaries (*n*), need not be cited at length. The Draft Code of 1879, s. 85, defines riot in reference to the previous definition in s. 84 of an unlawful assembly as—

"A riot is an unlawful assembly which has begun to act in a tumultuous manner to the disturbance of the peace."

The only remaining definition is that of Sir James Stephen (*o*) :

"A riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled by a breach of the peace, and to the terror of the public ; or a lawful assembly may become a riot if the persons assembled form and proceed to execute an unlawful purpose to the terror of the people,

(*l*) Upon this extract may be consulted *R.* v. *Maclauchlan* (1737), 17 St. Tr. 993, and *R.* v. *Hardie and Others* (1820), 1 St. Tr. (N.S.) 623 and 766, where the offences of treason and riot are contrasted. See also *post*, as to the "private" nature of the design in the offence of "Riot," and the cases there cited.

(*m*) Bk. IV., c. 11, s. 6.

(*n*) 4 Steph. Com. 7th ed., 254 ; 9th ed., 215 ; 14th ed., 174.

(*o*) Dig. Crim. Law (1877), Art. 72 ; (1904), Art. 77.

although they had not that purpose when they so assembled (*p*). Illustration :—A., B., and C. meet at A.'s house for the purpose of beating D., who lives a mile off. They then go together to D., and there beat him. At A.'s house the meeting is an unlawful assembly, on the road it is a rout, and when the attack is made on D. it is a riot."

In a previous edition of this book appeared the following definition of riot, formulated by the then editor, Mr. Edward Wise :

"A riot is where three or more persons are assembled together without the authority of the law, and engaged in the actual execution of a joint design of a private (*i.e.*, local) nature with violence and to the terror of the people."

ELEMENTS OF THE OFFENCE OF RIOT.

It is clear that the very nature of the offences, the definitions of which have been noticed in the preceding pages, is such as to depend very much upon the circumstances of each case : but still there are certain points which have been settled, and which will, without much difficulty, guide to a right conclusion on any occasion of tumult or disturbance. With these points it is now proposed to deal in what appears to be their natural order.

WHO MAY BE RIOTERS.—INFANTS.

The first matter is to consider what persons may be found guilty of and punished for the offence of taking part in a riot. It is laid down in Hawkins (*q*) that women are punishable as rioters, but infants under the age of discretion are not. Under the age of seven years an infant is presumed to be *doli incapax*, and

(*p*) See *R.* v. *Soley* (1707), 11 Mod. Rep. 116, *per* HOLT, C.J.
(*q*) Hawk. P. C., Vol. II., Bk. I, c. 65, s. 14, 7th ed.

cannot be endowed with any discretion, and against this presumption no averment can be received (*Marsh* v. *Loader* (1863), 14 C. B. (N.S.) 535; 11 W. R. 784; 4 Com. Brown & Hadley, p. 18). This incapacity ceases after the person attains the age of fourteen, and his conduct after that age becomes subject to the ordinary rules of law. Between the ages of seven and fourteen years the maxim "*Malitia supplet ætatem*" applies; the infant is deemed to be *doli incapax*, but only as a *primâ facie* presumption. Evidence of "*malitia*" may be given to rebut it.

"Malice, in the legal acceptation of the term, is not confined to personal spite against individuals, but consists in a conscious violation of the law to the prejudice of another" (*r*).

There appears to be no reason to doubt that the general rule of criminal law, as to the liability of infants for crimes, given above, will apply to such persons if charged with the offence of riot and kindred offences.

It has been gravely laid down (Dalt. c. 139, tit. "Riots") as to married women, that "imprisonment or other corporal pain shall be inflicted upon the wife only, and not upon the husband for his wife's act or default."

CORPORATIONS.

"It hath been holden that the persons of whom a corporation consists, being guilty of a riot, are punishable in their natural and not their politic capacity; for the corporation itself cannot be in fault, because it is invisible, and exists only in supposition of law. Yet there are some precedents by which it appears that corporations have been amerced and their

(*r*) *Per* Lord CAMPBELL, *Ferguson* v. *Earl of Kinnoull* (1842), 9 Cl. & F. 321; 4 Bla. Com. 23.

liberties seized into the King's hands, for suffering a dangerous riot to happen within their jurisdiction without using their endeavours to suppress it" (*s*).

NUMBER OF PERSONS—THREE OR MORE.

Fewer than three persons cannot be guilty of riot any more than one person can be guilty alone of conspiracy. The indictment, therefore, must show that three persons at the least were engaged, and that fact must be confirmed by the verdict, or else no judgment can be given against the accused (*t*). Therefore, if the jury acquit all but two, and find them guilty, the verdict is void, unless they be indicted "with divers other persons whose names are to the jurors aforesaid unknown," because it finds them guilty of an offence whereof it is impossible that they should be guilty, for there can be no riot where there are no more persons than two (*u*). But it has been determined that where two only are found guilty of riot, they having been indicted in both cases, "*simul cum aliis*," that judgment should be given against them, even though the others who were indicted do not come into trial (Strange, 193, 1227, and 12 Mod. 262). So where six persons were indicted for a riot, and two of them died before trial, two were acquitted, and two only found guilty, yet judgment was given upon this verdict. It was moved in arrest of judgment that two only could not be found guilty of riot unless they were indicted "together with others," which was not the case here, for it doth not appear that any others

(*s*) Bk. I., Vol. II., Hawk. P. C. c. 65, s. 13, 7th ed., citing *R.* v. *Kennett*, Lord Mayor of London during the Gordon Riots (reported (1781) 5 C. & P. 282 n.).

(*t*) See *R.* v. *Plummer*, [1902] 2 K. B. 339; 66 J. P. 647; 71 L. J. K. B. 805; 20 Cox C. C. 269.

(*u*) 2 Hawk. P. C., c. 47, s. 8; *Rex* v. *Sudbury* (1699), 12 Mod. 262; 2 Salk. 593; Vin. Abr. "Riot," E.

were guilty besides these two; here is no finding as to the two dead persons.

Lord MANSFIELD: "Six were indicted, two of them are acquitted, two are dead untried. The jury have found the other two guilty of a riot; consequently, it must have been with one or both of those who have not been tried, as it would not otherwise have been a riot" (*R.* v. *Scott and Hams* (1761), 3 Burr. 1262).

The indictment, therefore, should in all cases contain the words "with others," which will suffice, if evidence be given showing that three or more were actually engaged in the riot. See *R.* v. *Nicholls* (1742), 13 East, 412 n. It is interesting to note that in 1 Hawk. P. C., c. 65, ss. 2, 5, and 7, the expression "more than three persons" occurs; as to which it is said in Burn's Justice, tit. "Riot," that it is "an instance that in a variety of matter it is impossible for the mind of man to be always equally attentive."

JOINT PURPOSE.

As to the proof of the joint purpose which is implied in the definition quoted from Hawkins (*x*) in the words, "with an intent mutually to assist one another against any who shall oppose them," it is only necessary to give general evidence, and that will be more usually proved by what is subsequently done, or by the natural inference from the proceedings as deposed to in evidence, showing a display of force and general conduct calculated to overawe resistance. In the great majority of cases, however, no question will exist or arise as to the purposes of those charged with rioting. The conduct of the parties charged is seldom open to two constructions, for large bodies do not long allow their intentions to be a matter of inference or conjecture.

(*x*) *Ante*, p. 28.

The proof of a joint purpose is more important where the meeting is in its origin lawful. Thus, if at a fair or market or place of amusement a sudden quarrel occurs, and a public disturbance, to the terror of his Majesty's subjects, this would be an affray (*y*), and not a riot, because there would be no joint purpose. So if a jury fall out and fight, this is no riot, because they were lawfully assembled (*z*). But if after the quarrel parties are formed, and a joint purpose of mutual assistance entertained and put into execution, then the offence of riot will arise, or if in pursuance of any new purpose a meeting lawfully assembled should proceed to execute that purpose with violence, the offence would be no less a riot because they were met at first for another purpose. They are *assembled* together for the joint purpose from the moment that that purpose is entertained. But if three or more lawfully assembled quarrel and attack one of their own party, it is no riot; but if they jointly attack a stranger the very moment the quarrel begins there would be an unlawful assembly, and their concurrence would be evidence of an evil intention in them that concur, so that it is riot in them that act and no more (*a*).

ACTUAL EXECUTION WITH VIOLENCE TO THE TERROR OF THE PEOPLE.

A conspiracy may exist, whether it be to effect an illegal object, or a lawful object by illegal means,

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(*y*) Dalton, c. 137.

(*z*) See definitions Criminal Law Commissioners, 7th Rep., Art. 21, p. 175; 1 Russ. Cr. & M., 6th ed., 556; *R.* v. *O'Neill* (1871), 6 Ir. C. L. R. 1.

(*a*) *R.* v. *Ellis* (1708), 2 Salk. 595; 19 Vin. Abr. "Riot," A. 15; Burn's Justice, "Riot," 1.

without any act being done by the conspirators. See *O'Connell's Case* (1844), 5 St. Tr. (N.S.) 1 ; 11 Cl. & F. 233 ; 9 Coke, 55 B. ; and *R.* v. *Best* (1705), 2 Ld. Raym. 1167. So an unlawful assembly is where three or more persons meet together under such circumstances of terror and alarm as, according to the opinion of firm and rational men, will produce danger to the peace and tranquility of the neighbourhood without any aggressive acts. See *R.* v. *Vincent* (1839), 3 St. Tr. (N.S.) 1037 ; 9 C. & P. 91, 109 ; and *R.* v. *Neale* (1839), 3 St. Tr. (N.S.) 1812 ; 9 C. & P. 435. But to constitute the offence of riot the parties must be in the actual execution of the purpose, and in such a manner as to cause terror to the people. An unlawful assembly has been distinguished from a riot in that it is a meeting for a purpose the actual execution of which would be a riot, but at which meeting nothing is done (*R.* v. *Birt* (1831), 5 C. & P. 154, *per* PATTESON, J). In such an unlawful assembly acts of violence, in pursuance of the common object by any of the party then assembled would, no doubt, constitute a riot. So persons assaulting constables when engaged in dispersing an unlawful assembly are guilty of riot (*b*). But both as to the degree of terror necessary, and as to what is the violent execution of the purpose, much latitude seems to have been left to the discretion of the jury in each particular case.

It is on occasions like these that the tribunal of the jury is of such essential assistance to the due administration

(*b*) *R.* v. *Williams and Vernon* (1848), 6 St. Tr. (N.S.) 775. *Cf.* WILDE, C.J., in *R.* v. *Ernest Jones* (1848), 6 St. Tr. (N.S.), at p. 811, as to speeches at a meeting advising resistance to the police, and *R.* v. *Roberts* (1849), 4 Cox C. C. 145, as to persons assembled together to resist the execution of a lawful search warrant.

of justice. As men of sense and experience of the affairs of life, and accustomed to the exercise of the rights and duties of citizens, they alone can weigh all the circumstances with a due regard to the invaluable right of free expression of public opinion on the one hand, and on the other to the preservation of freedom of action to every member of the community. Some remarks and deductions may, however, be made upon these two points. It may, in the first place, be safely laid down that much stronger evidence of the means to inspire terror, and of the actual execution of the purpose, will be required when the meeting and purpose are in themselves lawful (Dalton, c. 137), than when they are unlawful, and directly causing a breach of the peace.

Very slight evidence indeed seems to be necessary in such cases, as, for instance, where parties meet with the intention of aiding, encouraging, and abetting a prize fight, which is clearly illegal and a breach of the peace by all concerned in it, and if, whilst they are so intending, the fight takes place, they may be indicted for a riot (*R.* v. *Perkins* (1831), 4 C. & P. 537); a somewhat curious case, as the jury acquitted the defendants of the assault, and convicted them of the riot, although the fight had actually taken place.

They may also be indicted for an assault, for when a prize or other fight takes place, and a number of persons are assembled to witness it, if they have gone thither for the purpose of seeing the combatants strike each other, and were present when they did so, they are all in point of law guilty of an assault, and there is no distinction between those that concur and those that actually fight (*R.* v. *Billingham* (1825), 2 C. & P. 234; *R.* v. *Hargrave* (1831), 5 C. & P. 170). For, in these

cases, the intention of the parties is not innocent in itself, each being careless of what hurt may be given, provided the promised reward or applause be gained; and meetings of this kind have also a strong tendency in their nature to a breach of the peace (Fost. Cr. Cases and Discourses, 260, 1 East, P. C., c. 5, s. 42, p. 270; *R.* v. *Murphy* (1833), 6 C. & P. 103; *R.* v. *Young* (1838), 8 C. & P. 644). In the case of *R.* v. *Coney and Others* (1882), 8 Q. B. D. 534; 46 J. P. 404; 51 L. J. M. C. 66; 15 Cox C. C. 46; 46 L. T. (N.S.) 307; 30 W. R. 678, it was held by the whole court of eleven judges that the combatants at a prize fight and all persons aiding and abetting therein were guilty of a common assault, but it was further held (Lord COLERIDGE, C.J., POLLOCK, B., and MATHEW, J., dissenting) that the mere voluntary presence of persons at a prize fight does not necessarily make them guilty as aiding and abetting. LOPES, J., in his judgment, says:

"I cannot hold, as a proposition of law, that the mere looking on is *ipso facto* a participation in or encouragement of a prize fight. I think there must be more than that to justify a conviction for an assault. If, for instance, it was proved that a person went to a prize fight knowing it was to take place, and remained there for some time looking on, I think that would be evidence from which a jury might infer that such person encouraged, and intended to encourage, the fight by his presence" (*c*).

The case previously mentioned (*R.* v. *Perkins*) would almost seem to show that where there is a deliberate breach of the peace by a number of persons assembled in a tumultuous manner, the proof of "*in terrorem populi*" is an inference in law. Indeed, it can hardly

(*c*) See also *post*.

be doubted that a large assembly of persons brought together for the purpose of executing a common and unlawful purpose, such as taking part in or encouraging a prize fight by their presence, is an assembly *calculated* to produce terror and alarm among the King's subjects within the meaning of the above-cited definition of riot framed by the Criminal Law Commissioners. There is, however, a case of *R.* v. *Hunt and Others* (1845), 1 Cox C. C. 177, which would appear to be inconsistent with *R.* v. *Perkins*. There the principals and seconds in a prize fight were indicted in one count for a riot, and in another for an affray. The evidence was that the two first prisoners had fought together amongst a great crowd of persons, and that the others were present aiding and abetting; that the place where they fought was at a considerable distance from the highway, and when the officers made their appearance the fight was at an end. The prisoners, on being required to do so, quietly yielded. ALDERSON, B., said:

"It seems to me that there is no case against these men. As to the affray, it must occur in some public place, and this is to all intents and purposes a private one. As to the riot, there must be some sort of resistance made to lawful authority to constitute it—some attempt to oppose the constables who are there to preserve the peace. The case is nothing more than this: two persons choose to fight, and others look on, and the moment the officers present themselves all parties quietly depart. The defendants may be indicted for assault, but nothing more" (*d*).

In the above-mentioned case of *R.* v. *Coney and Others*, the defendants were indicted for riot, rout, and assault, *but all the counts* except the seventh and eighth were abandoned by the prosecution, the former of those

(*d*) See *R.* v. *Brown* (1841), Car. & M. 314; and *R.* v. *Orton and Others* (1878), 14 Cox C. C. 226.

two counts charging all the defendants except B. (one of the actual combatants) with assaulting him, and the latter charging all the defendants except M. (the other combatant) with assaulting him. The fight there took place in a plantation on private land, and a few yards from the highway, and it does not appear from the reports of the case that any evidence was adduced showing that the meeting was "*in terrorem populi*." In cases of the kind, therefore, where the defendants are charged with the offence of riot, it would be advisable to produce actual evidence of some terror caused to the King's subjects by reason of the assemblage.

PROOF OF TERROR.

In *R.* v. *Birt* (1831), 5 C. & P. 154, where a number of persons cut down the fence of the enclosures in the Forest of Dean, all that is stated in the report of the proof of "*in terrorem populi*" is that the surveyor-general of the forest and his woodmen did not think themselves sufficiently strong to resist. But the most remarkable case is *R.* v. *Langford* (1842), 1 Car. & M. 602, which occurred under the statute 7 & 8 Geo. 4, c. 30, relating to the felonious demolition of houses (*e*). That statute gives no definition of what shall be a riot within the meaning of the enactment, and therefore the common law definition of riot had to be resorted to; and upon a case reserved all the judges held that it was a sufficient terror and alarm *if any one* of the Queen's subjects being present was terrified, and upon that decision the prisoners were sentenced, although only one old man was shown to have been terrified. It is true that in the particular case the proceedings were

(*e*) See *post*.

violent, but still the case establishes that more than one need not be affected by terror consequent on the violence.

"A riot must be attended with circumstances of terror to the people. No one appears here to have been alarmed but the old man, but if you find that such force was used by the prisoners as to terrify the old man, I think that in point of law there was a riot, and the question for you to consider upon that part of the case is, whether this assembly was attended with circumstances of alarm and terror to *any* of her Majesty's subjects, for if it was, I think that it amounts to a riot" (*f*).

It is not necessary that personal violence should have been committed. See *per* MANSFIELD, C.J., in *Clifford* v. *Brandon* (1809), 2 Camp. 369, *post*, p. 56.

The averment, however, as to terror is essential to the validity of the indictment.

Thus, in a similar case of cutting down enclosures the indictment omitted the allegation "*in terrorem populi*"; and PATTESON, J., held that the defendants might be convicted of an unlawful assembly, though not of riot, by reason of such omission (*R.* v. *Cox* (1831), 4 C. & P. 538; 1 Hawk. P. C. c. 65, s. 5. See also the case of *R.* v. *Hughes* (1830), 4 C. & P. 373).

PRESENT OR APPREHENDED TERROR.

In the previously quoted case of *R.* v. *Dewhurst* (1820), 1 St. Tr. (N.S.) 530, a doubt was expressed by BAYLEY, J., at p. 598, as to whether the terror must be a terror caused by the assembly before it has dispersed, or whether fear of a future rising in

(*f*) *Per* PATTESON, J., *R.* v. *Langford*, *ubi supra*.

consequence of the particular assembly would be sufficient :

"Upon the subject of terror, there may be cases in which, from the general appearance of the meeting, there could be no fear of immediate mischief produced before that assembly should disperse ; and I am rather disposed to think that the probability or likelihood of immediate terror before the meeting should disperse is necessary in order to fix the charge upon that second count to which I have drawn your attention (*g*). If you should negative the terror and alarm of *present mischief*, but should be of opinion that the circumstances were calculated to produce terror and alarm of future rising, I should recommend a special verdict, my mind not being perfectly clear on that subject, whether a dread at the present of future rising is or is not sufficient to constitute that crime with which the defendants are now charged" (*h*).

Whether mere Numbers produce Terror.

In two cases the question has been discussed whether mere numbers of those composing an assembly would, without other circumstances, render such assembly unlawful. The cases referred to are *R.* v. *Hunt* (1820), 1 St. Tr. (N.S.) 436, arising out of what was known as "Peterloo" or the "Manchester Massacre," and *R.* v. *Dewhurst* (1820), 1 St. Tr. (N.S.) 529, in which the circumstances of a meeting at Burnley were discussed. Bayley, J., before whom these cases were tried, in effect laid it down that mere numbers will not necessarily make an assembly unlawful, unless there are other circumstances calculated to produce feelings of terror and alarm, but numbers may make an assembly unlawful if terror is naturally and necessarily the

(*g*) The charge here referred to was, to use the learned judge's description of it, that of "unlawfully assembling together to the terror of his Majesty's subjects."

(*h*) The same doubt was expressed by Bayley, J., when summing up the case of *R.* v. *Hunt* (1820), 1 St. Tr. (N.S.) 436.

result of the gathering together of such numbers. "Numbers *might* create terror as much as weapons or violence" (*per* RECORDER OF LONDON, *R.* v. *Carlile* (1831), 4 C. & P. 421.)

TUMULTUOUS SPORTS AND PASTIMES.

It is from the absence of any reasonable terror that meetings for public games, as football, wrestling, or formerly even for bull-baiting, would not be within the character of riots. An indictment is, indeed, to be found drawn in 1797, which was drawn to suppress an ancient custom of football playing at Kingston-on-Thames upon Shrove Tuesday (*i*). Probably, however, this was like the more recent Stamford bull-baits and the Derby football playing, often merely the excuse for such a tumult as could not fail to be to the terror of the inhabitants; it is further to be observed that a second count was inserted in the indictment above mentioned, alleging a common nuisance in kicking about a football in certain highways to the danger and annoyance of the inhabitants.

As an instance of a somewhat similar sport to that in the Kingston-on-Thames case, *Pappin* v. *Maynard* (1863), 27 J. P. 745, may be mentioned. There there was an advertisement that a mock hunt would take place, and at the advertised time a crowd met in the highway and chased a person dressed like a stag with noise and tumult, and to the disturbance of horsemen and others passing along the highway. This was held to be an offence under section 72 of the Highway Act, 1835 (5 & 6 Will. 4, c. 50). In *Sir Anthony Ashley's Case*

(*i*) 2 Chit. Crim. Law, 494.

(1615), 1 Roll. R. 109, COKE, C.J., said that stage-players might be indicted for a riot and unlawful assembly. And Dalton, in his Country Justice (*k*), says that if such players by their shows occasion an extraordinary and unusual concourse of people to see them act their tricks, this is an unlawful assembly and riot, for which they may be indicted and fined (*l*).

The following passage from Pulton, "De Pace Regis et Regni," p. 25, published in 1609, is worth preserving as an illustration of the amusements of the people in the olden time :

"An assembly of three persons or more, which is not to the terror of the people, nor to do some act with force and violence against the peace, is not unlawful. The watch in London on Midsummer's night is lawful, and so be such like in other cities and towns. Assemblies be lawful that be used upon May day to fetch in May boughs or flowers, and so be assemblies at church ales, Whitsun and Midsummer ales. Assemblies at the fetching home, setting up, or dancing round a May-pole, and assemblies at the baiting of a bull or bear, and at the mowing or making a doll or revelment, and assemblies of minstrels and their fellows at certain places or times of the year, allowed by ancient custom, are also lawful ; and assemblies to play at cards, tables, bowls, clash, bucklers, wasters, halfswords, tennis, quoits, cailes, or such other games, be likewise by the common law tolerable ; and assemblies to run at quinball, sandbag, base, feetball, handball, and such like disports, be likewise lawful."

Among the illustrations given in the old books of an unlawful assembly, executing a joint purpose without causing terror, and therefore without being a riot is a meeting to perform mass, and afterwards performing the same, or an assembly to carry off a piece of timber under a claim of right, and carrying it off, but without threatening words or other circumstances of terror (*m*).

(*k*) Just. 136. (*l*) See also Vin. Abr. tit. "Riots," A. 8.
(*m*) 1 Hawk. c. 65, s. 5 ; Lamb. 178 ; Dalt. c. 137 ; *R.* v. *Birt* (1831), 5 C. & P. 154.

HOW FAR EXECUTION OF THE JOINT PURPOSE IS ESSENTIAL.

It will have been observed that in the definitions, as cited from the text writers, the words "afterwards actually executing the same" are used, and the Criminal Law Commissioners in the definition of riot framed by them, say "wholly or in part execute such purpose," while the editor of the first and second editions of the present work adopted the phrase "engaged in actual execution" as appearing to be somewhat more correct. The imperfection of language renders it impossible to mark precisely the transition from intention to action, and the different degrees of completeness in executing a purpose, so as to lay down beforehand what amount of aggressive conduct will constitute such an actual execution of the design as to render the parties liable for a riot.

In the majority of instances, as has been before observed, the conduct of large bodies of men will not be open to two constructions, and no doubt will be entertained as to the violence of their proceedings. It is, however, necessary to dwell at some little length upon this point, as there is some ambiguity in the authorities; and, to speak generally, upon the existence of a riot will depend the justification of interference by a private person, and the legality of reading the proclamation under the Riot Act, and the consequent application of its stringent provisions. Moreover, notwithstanding the undoubted violence in fact, proof to the full extent may be accidentally deficient.

In the case of *R.* v. *Soley* (*u*), Lord HOLT is reported to have said: "Though no act is done, if a number of

(*u*) *R.* v. *Soley* (1707), 11 Mod. 116. See 1 Russ. Cr. & M., 6th ed., 553 n.

men assemble in arms, *in terrorem populi*, it is a riot"; and as an example, is put: "If three men come out of an alehouse, and go armed, it is a riot." This dictum of Lord Holt in the case referred to was prefaced by the remark: "I take it, it is not necessary to say that they assembled for that purpose, but there must be an unlawful assembly; and as to what act will make a riot, or trespass, such an act as will make a trespass will make a riot." The passage above cited then follows.

There appears to be no doubt that the dictum of Lord Holt is incorrect if it is to be taken to mean that the mere assembling or being together in the manner specified would constitute a riot. But, on the other hand, it must not be inferred, from the expressions used by the text-writers, that in every case persons or property must suffer actual violence, in the ordinary sense of the words, that is, that injury must in fact be inflicted on persons or things before a riot can be said to exist.

It is submitted that neither the authorities nor the reason of the thing demand this strict construction, but that it suffices if the conduct of the parties is so tumultuous, and has such a direct and inevitable tendency to violence, and excites such terror and alarm as to deprive those opposed to its influence of the freedom of action.

Legality of Purpose.

Although some of the earlier authorities (see *R.* v. *Soley* (1707), 11 Mod. 116; 2 Salk. 594) seem to imply that the purpose must be illegal, yet the better opinion is that the legality of the purpose is wholly

immaterial, provided the other ingredients of the offence exist. There is little doubt that it would be so held at the present day ; for the obvious policy of the law is to prevent any interruption to the pursuits of the community at large by violence and tumult under whatever pretence, and to restrain individuals from taking the law into their own hands to redress their private grievances to the great risk of dangerous consequences. See Hawk. P. C. Vol. II., Bk. I, c. 65, s. 7 ; 12 Mod. 648 ; *R.* v. *Vincent* (1839), 3 St. Tr. (N.S.) 1037 ; 9 C. & P. 91 ; *R.* v. *Neale* (1839), 3 St. Tr. (N.S.) 1312 ; 9 C. & P. 431 (*o*).

Thus, for a number of persons to abate a common nuisance, *e.g.*, to destroy an unlawful enclosure, is legal, but it must be done in a peaceable manner, so that there is no breach of the peace (Dalt. 137). On this principle it was decided in *Perry* v. *Fitzhowe* (1846), 15 L. J. Q. B. 239, that a man had no right to attempt to remove a house which is an encroachment upon a common while there are persons actually therein, on account of the manifest danger to the public peace.

ENFORCING TITLE TO LAND OR GOODS BY FORCE RIOTOUS.

A decision of the Court of Star Chamber cited in Vin. Abr. ("Riot" A. 9) may be here mentioned. In that case a charge was made of riot for cutting of corn, and it was agreed by the whole court that if a man has title to corn, although he comes with great

(*o*) See also the charge of TINDAL, C.J., to the grand jury at the special commission at Stafford, *post*, and also *R.* v. *Clarkson and Others*, *ante*.

number to cut it with sickles, it is no riot; but if he has not any title, although that he does not come with other weapons than with sickles and cuts down the corn, it is a riot. A decision of the court of Star Chamber is not, indeed, to be taken as a declaration of the law (*p*); but there are other authorities of a similar purport, and before quoting them it may be well to point out certain passages from Hawkins which appear to be inconsistent with the last-mentioned decision. After stating that meetings for the exercise of sports and diversions are not riotous, as not being *in terrorem populi*, it is laid down (*q*):

"Section 5.—From the same ground, also, it seems to follow that it is possible for more than three persons to assemble together with an intention to execute a wrongful act, and also actually to perform their intended enterprise, without being rioters; as if a competent number of persons assemble together in order to carry off a piece of timber to which one of them hath a pretended right, and afterwards do carry it away without any threatening words or other circumstances of terror."

Again, in s. 7, it is stated that it is in no way material whether the act intended to be done by such an assembly be of itself lawful or unlawful, from whence it follows that:

"If more than three persons assist a man to make forcible entry into lands to which one of them has a *good right* of entry; or if the like number in a violent and tumultuous manner join together in removing a nuisance, which may lawfully be done in a peaceful manner, they are as properly rioters as if the act intended to be done by them were never so unlawful; for the law will not suffer persons to seek redress of their private grievances by such dangerous disturbances of the

(*p*) As to the powers and constitution of the Court of Star Chamber, see Taswell Langmead's English Constitutional History, 6th ed., 117.
(*q*) Hawk. P. C., Vol. II., Bk. I., c. 65, s. 5, 7th ed.

public peace. However, the justice of the quarrel in which such an assembly doth engage is certainly a great mitigation of the offence."

To the same effect is Dalton, c. 137, and *per Curiam* (*r*) :—"If one goes to assert his right by force and violence, he may be guilty of a riot."

VALIDITY OF TITLE IMMATERIAL.

The distinction here intended to be drawn by the Star Chamber between the case of a man possessing a right to the corn and a man having no title thereto, is apparently against the weight of authority upon the subject, and it is submitted that the existence or not in such a case of a title is immaterial, and however good the claim to the corn may have been, the fact that it was taken possession of by the claimant, accompanied by numbers with a show of force to the danger of the public peace, would suffice to show that the whole proceeding was a riot; indeed, the statement of a similar case by Dalton in his Country Justice, c. 137, shows clearly the true ground upon which the existence or not (to again use the illustration of the Star Chamber case) of the title to the corn claimed is immaterial. He says :

"If a man assemble a meet company to carry away a piece of timber or other thing, whereto he pretends a right, that cannot be carried without a great number, if the number be not more than are needful for such purpose, although another man hath better right to the thing so carried away, and that this act be wrong and unlawful, yet it is of itself no riot, *except* there be withal threatening words used, or other disturbance of the peace."

HOLROYD, J., in *R.* v. *Brodribb* (1816), 6 C. & P. 575, doubted whether going out in a body armed at night, with faces disguised, was not indictable as a

(*r*) Anonymous case 1048 (1701), 12 Mod. 648.

riot. That was a case, under the Unlawful Oaths Act, 1797 (37 Geo. 3, c. 123), against sixteen persons who, with blackened faces and armed with guns, were intending to go out for the purpose of night poaching. It was held that this assembly could not possibly be other than an unlawful assembly, and therefore an oath taken to keep the fact of the meeting secret was in itself illegal. It might well be that if such an assembly of persons were to proceed to execute the unlawful purpose for which they had met, the offence of riot would be then complete.

Hawkins (1 Hawk. c. 65, s. 4) says that riding armed (*s*), with unusual weapons, on the highway, or otherwise assembling together in such a manner as is apt to raise a terror in the people without any *offer of violence* to any one in respect of his person or possessions does not properly constitute a riot, but only an unlawful assembly. But, as is well known, violence in law is something less than violence in common parlance. Every assault is a breach of the peace, and an assault may be committed without any actual blow being inflicted ; as, for instance, by pointing a loaded gun at a person, or aiming a blow at a person when within striking distance, or by doing any other act with an intention to use violence. There might be an attempt by numbers to enforce a person by threats and menaces not followed up by any actual injury, only because the party threatened yielded ; and this, it is submitted, would be something more than an unlawful assembly, or even a rout, and a jury might be justified in finding it to be a riot (*t*).

(*s*) See the statutes quoted above upon this subject, *ante*, p. 26.
(*t*) See *Clifford* v. *Brandon*, *post*, and Lord MANSFIELD'S remarks therein. See the charge of TINDAL, C.J., *post*, p. 53.

REMOVING WRONGFUL OBSTRUCTION TO RIVER.

Dalton (*c.* 137), continuing his discussion of the question whether or not a riot is committed by a person who, with others, enforces some claim of right to property, but without threatening words or conduct, says :

"Thus every private man to whose house or land any nuisance shall be erected, made, or done, may in peaceable manner assemble a meet company with necessary tools, and may remove such nuisance, and that before any prejudice received thereby ; and for that purpose, if need, he may also enter into another man's ground. A man erected a wear across a common river, where people had a common passage with their boats, and divers did assemble with spades, crows of iron, and other things necessary to remove the said wear, and made a trench in his land who erected the wear, to turn the water, so as they might take up the wear, and they thus did remove the said nuisance ; this was holden neither any forcible entry, nor yet any riot. But in the cases aforesaid, if, in removing any such nuisance, the persons so assembled shall use any threatening words (as to say they will do it though they die for it, or such like words), or shall use any other behaviour in apparent disturbance of the peace, then it seemeth to be a riot ; and therefore, when there is cause to remove any such nuisance, or to do any like act, it is the safest not to assemble any multitude of people, but only to send one or two persons, or if a greater number, then no more than are needful, and only with meet tools, to remove, pull, or cast down the same, and that such persons tend their business only without disturbance of the peace or threatening speeches."

COMBINATIONS OF WORKMEN—STRIKES.

The language of TINDAL, C.J., in his charge to the grand jury on the Special Commission at Stafford in 1842 (*u*), seems to support this view. After describing some of the disturbances which had given rise to the

(*u*) C. & M. 661. See also Part VI., *post*.

holding of the Special Commission over which he was then presiding, he continued:

"If the workmen of the several collieries and manufactories, who complained that the wages which they received were inadequate to the value of their services, had assembled themselves together peaceably for the purpose of consulting upon and determining the rate of wages or prices which the persons present at the meeting should require for their work, and had entered into an agreement amongst themselves for the purpose of fixing such rate, they would have done no more than the law allowed. But, unfortunately for themselves and for others, those who were discontented did not rest here. Not satisfied with the exercise of their own right to withhold their own labour if they were discontented with the price they received for it, they assumed the power of interfering with that right of exercising their discretion upon the same point which others possessed. Large bodies of dissatisfied workmen interfered by personal violence, and by threats and intimidation, to compel others who were perfectly willing to continue to labour in their callings at the rate of wages then paid, to desist from their work, to leave the mine or manufactory, and against their own will to add themselves to the numbers of the discontented party, than which a more glaring act of tyranny and despotism by one set of men over their fellows cannot be conceived. It is unnecessary to say that a course of proceeding so utterly unreasonable in itself, so injurious to society, so detrimental to the interests of trade, and so oppressive against the rights of the poor man, must be a gross and flagrant violation of the law, and must be put down, when the guilt is established, by a proper measure of punishment (*x*). . . . But even without any evidence that combination is the object or purpose of the meeting, if a large body of persons assemble themselves together for the purpose of obtaining any particular end, and conduct themselves in a turbulent manner, either accompanied by acts of violence, *or with threats and intimidation calculated to excite the terror and alarm of the Queen's subjects, this is in itself a riot*, whether the end and object proposed be a just and legitimate one or not. If, therefore, bills be preferred before you charging individuals with riot, for the purpose of raising the rate of wages, and the evidence should show the conduct of the parties to have been of the description just adverted to, the offence of riot is complete in point of law."

(*x*) The language of the RECORDER OF LONDON in *R.* v. *Carlile* (1831), 4 C. & P. 421, is very similar.

THE "O. P." RIOTS.

A similar opinion was expressed by MANSFIELD, C.J., in the case of *Clifford* v. *Brandon* (1809), 2 Camp. 369, the facts of which afford a curious illustration of the law of riot, and are therefore given at some length. The case arose out of the famous "O. P." Riots at Covent Garden Theatre (*y*). The action was for false imprisonment, and the defendant pleaded in justification that he gave the plaintiff into custody for a riot at the theatre. It appeared in evidence that the plaintiff, a gentleman of considerable eminence at the bar, went one evening into the pit of Covent Garden Theatre during the middle of the performance. On this, as on every night from the first opening of the house, great noise and confusion prevailed by reason of the prices of admission to the pit having been raised by the management, and the public excluded from a number of boxes which were let to individuals for the season. The performance on the stage was quite inaudible; the spectators sometimes stood on the benches, and at others sat with their backs to the stage. While the play was proceeding "Rule Britannia" was sung by persons in different parts of the theatre, horns were blown, bells were rung and rattles sprung; placards were exhibited exhorting the audience to resist the oppression of the managers, and a number of men wore in their hats the letters "O. P." or "N. P. B.," meaning "Old Prices" and "No Private Boxes." There were sham fights in the pit, but no violence was offered to any person either on the stage or in any other part of the house, and no injury was done to any part of the house or to its decorations. When Mr. Clifford appeared in the pit

(*y*) As to riots in theatres, see 6 & 7 Vict. c. 68, ss. 8, 9, *post*.

there was a cry of "There comes the honest counsellor," and a passage being opened for him, he went and seated himself in the centre of the pit. Soon afterwards a gentleman asked him if there was any harm in wearing the letters "O. P." He answered "No." The gentleman then asked him if he had any objection to wear them himself. He said "I have not." The letters "O. P." were then placed in his hat which, thus ornamented, he put on. He continued, however, to sit without taking any part in the disturbance, and he persuaded a person who was near him to desist from blowing a trumpet. Having conducted himself in this quiet manner while in the house, he was retiring from it (whether the performance was over or not did not appear), and when he got about two yards from the pit door, where the money is received, the defendant, who was box-keeper to the theatre, ordered him to be taken into custody. A constable accordingly laid hold upon him, and carried him to the police office at Bow Street, before Mr. Read, the presiding magistrate, but nothing being proved against him except the wearing of the letters "O. P." in his hat, after being detained about half-an-hour, he was set at liberty. The question was whether these facts proved the justification, in other words, whether there was a riot or not. In the course of his summing up, MANSFIELD, C.J., said:

"If any body of men were to go to the theatre with the settled intention of hissing an actor, or even of damning a piece, there can be no doubt that such a deliberate and preconcerted scheme would amount to a conspiracy, and that the persons concerned in it might be brought to punishment (*z*).

(*z*) Macklin obtained a criminal information against several persons for such a conspiracy, and they were found guilty. In more recent times the editor of the Satirist brought an action against the Duke of Brunswick for a similar conspiracy. See *Gregory* v. *Duke of Brunswick* (1843), 1 C. & K. 24.

If people endeavour to effect an object by riot and disorder they are guilty of a riot. It is not necessary to constitute this crime that *personal violence* should have been committed, or that a house should have been pulled in pieces. I am clearly of opinion that the scenes which have been described amount to riot. How can it be said that there was no terror? Would any of the jury allow their wives or daughters to go to the theatre during these disturbances? Must not those who entertain a different opinion upon the matters in dispute, and are friendly to the managers, expect to meet violent ill treatment? The jury will consider, then, whether Mr. Clifford was an instigator of the riot, which one of his witnesses has represented as resembling a quarrel among a thousand drunken sailors. The law is, that if any person encourages or promotes or takes part in riots, whether by words, signs, or gestures, or by wearing the badge or ensign of the rioters, he is himself to be considered a rioter, and he is liable to be arrested for a breach of the peace. In this case all are principals" (*a*).

The jury in the case, however, found for the plaintiff, but that was because some of them thought that the riot was over, and others that the plaintiff had not instigated it. The marginal note to the above case put the decision thus:

"Although the audience in a public theatre have the right to express the feelings excited at the moment by the performance, and, in this manner, to applaud or to hiss any piece which is represented, or any performer who exhibits himself on the stage; yet if a number of persons, having come to the theatre with a predetermined purpose of interrupting the performance, for this purpose make a great noise and disturbance, so as to render the actors entirely inaudible, though without offering personal violence to any individual or doing any injury to the house, they are in point of law guilty of a riot."

The Criminal Law Commissioners (5th Report, p. 97), referring to this case, say:

"It is not necessary that any violence to person or property should have been actually committed where there is a manifest

(*a*) As to the liability of persons encouraging by their presence or otherwise the proceedings alleged to be riotous, see *post*, "Guilty Participation," and also *R.* v. *Coney and Others*, *ante*, p. 39.

tendency to force, as by carrying arms, or making use of menacing or turbulent language or gestures."

The question as to a disturbance in the theatre has also been discussed in the Irish courts upon an *ex officio* information filed by the Attorney-General for Ireland for a conspiracy to create a riot at the theatre, the real object of which was a manifestation of public opinion against the Lord Lieutenant (*b*).

BUSHE, C.J., after stating the right of the public to express mere disapprobation by hissing and hooting, said :

"This privilege, however, is confined within its limits. They must not break the peace, or act in such a manner as has a tendency to excite terror or disturbance. Their censure or approbation, although it may be noisy, must not be riotous. No person in a public assembly has any right to break or even endanger the public peace."

THE DESIGN MUST BE OF A PRIVATE OR LOCAL NATURE.

This qualification may be stated in other words, that the design in respect of which the violence is committed must not amount to high treason. It has, in truth, very little practical effect, but its introduction arises from the doctrine of high treason by constructive levying of war. This doctrine has often been attacked (*c*), but whilst it is too firmly established to be upset in point of law, it has too little foundation in the principle of common sense to obtain the concurrence of juries, should any attorney-general ever be bold enough to attempt its enforcement to the full extent.

(*b*) *R.* v. *Forbes* (1822), 1 Crau. & Dixon, 157 ; Greene, Rep. 346.

(*c*) See Luder's Treatise on the Law of High Treason, and notes to *R.* v. *Damaree* (1710), 15 How. St. Tr. 522—614 ; Crim. Law Commissioners' 5th Report, p. 90. See also, *ante*, p. 29.

DISTINCTION BETWEEN RIOT AND TREASON.

The following extract from the charge of TINDAL, C.J., to the grand jury at the trial of Frost and others for treason (*d*), accurately points out the distinction between local disturbances and constructive treason :

"It has been laid down by undoubted authority that if a large number of persons assembled together, whether armed with military weapons or not, endeavour, by dint of superior numbers or superior strength, to effect any matter or object purely of a private nature, as, for example, to prosecute some private quarrel or take revenge for some private injury, to destroy some particular enclosure, or to remove some particular nuisance, or generally to accomplish some end in which the particular parties assembled together had, or supposed they had, any private interest, such acts of violence and aggression, however the authors of them may be punishable for a high misdemeanor, do not amount to a levying of war within the statute of Edward III. But every insurrection which, in judgment of law, is intended against the person of the King, whether to dethrone or imprison him, or to oblige him to alter his measures or government, or to remove evil counsellors from about him, all such risings amount to a levying of war within the statute. So 'insurrections to throw down all enclosures, to alter the established law or change religion, or enhance the price of all labour, or to open all prisons—all risings to effect these innovations of a public or general concern by an armed force are in construction of law high treason within the clause of levying war ; for though not levelled at the person of the King, they are against his royal Majesty, and besides, they have a direct tendency to dissolve all the bonds of society and to destroy all property, and all government too, by numbers and an armed force. Insurrections likewise, for redressing national grievances or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest—risings to effect these ends by force and numbers are, by construction of law, within the clause of levying war, for they are levelled at the King's crown and royal dignity' (*e*).

(*d*) *R.* v. *Frost* (1839), 4 St. Tr. (N.S.), at p. 92 ; 9 C. & P. 129. See also *R.* v. *Hardie and Others* (1820), 1 St. Tr. (N.S.), at pp. 623, 766, as to the contrast between riot and treason.

(*e*) Foster's Crown Cases and Discourses, p. 210.

And accordingly it was held in the reign of Queen Anne that a large body of men tumultuously rising and assembled together, with the avowed purpose of putting down all the meeting-houses of Protestant dissenters, and proceeding to pull down several, until prevented by force, brought the parties who were guilty of that act within the branch of the statute of levying war against the Queen (*f*). And in a more recent case (*g*), where a riotous multitude, headed by Lord George Gordon, and acting in concert with the declared design of putting down or destroying all chapels belonging to those of the Roman Catholic persuasion, proceeded to put that design in force, there was no doubt but that the facts, if proved against the parties accused, would have amounted to the offence of high treason in levying war against the King."

The inexpediency of retaining this doctrine of constructive treason has been forcibly pointed out by the Criminal Law Commissioners in their 5th Report, quoted above at p. 29, where the omission from the definition of riot, as given by the Commissioners, of the "private or local nature" of the design of the persons charged is discussed.

A curious case illustrative of the law of constructive treason and of riot is the above quoted case of *R.* v. *Dammaree and Others*. The defendants were tried for and convicted of high treason in levying war against the Queen, under pretence of pulling down meeting-houses—

"There is a vast difference," said PARKES, C.J., "between a man's going to remove an annoyance to himself and going to remove a public nuisance, as the case of the bawdy-houses, and the general intention to pull them all down is the treason; for if those that were concerned for them would defend them, and the others would pull them down, there would be a war immediately. In the case of enclosures, where the people of a town have had part of their common enclosed, though they have come with great force to throw down that enclosure, yet

(*f*) *R.* v. *Dammaree and Others* (1710), 15 How. St. Tr. 522, 606.
(*g*) *R.* v. *Gordon* (1781), 21 St. Tr. 485.

that is not levying of war; but if any will go to pull down all enclosures, and make it a general thing to reform that which they think a nuisance, that necessarily makes a war between all the lords and the tenants. A bawdy-house is a nuisance, and may be punished as such; and if it be a particular prejudice to any one, if he himself should go in an unlawful manner to redress that prejudice it might be only a riot, but if he will set up to pull them all down in general, he has taken the Queen's right out of her hands; he has made it a general thing, and when they are once up they may call every man's house a bawdy-house, and this is a general thing; it affects the whole nation."

To the same effect is Coke's statement of the law (*h*). The instance given by PARKES, C.J., as to the pulling down bawdy-houses is taken from *R.* v. *Messenger and Others* (*i*). The defendants in that case were indicted for high treason in tumultuously assembling together in divers places under colour of pulling down bawdy-houses. The occasion which resulted in this trial was Easter Monday, March 23rd, 1668, a customary holiday of the apprentices of London. It appeared that a crowd of apprentices and others having assembled together in Moorfields—

"Were instigated by some factious persons, who, to colour their design, insinuated into the rabble the pulling down of bawdy-houses, under which colour of reforming bawdy-houses they at length raised a great hubbub, and so increasing in their disorders in a tumultuous manner, committed many notorious crimes."

The question as to whether this conduct amounted to constructive levying of war was reserved by KELYNGE, C.J., who tried the case, for the purpose of consulting all the judges, who afterwards, with the exception of

(*h*) 3 Inst. 9; and see *R.* v. *Bradshaw* (1597), Poph. 122.
(*i*) (1668), Kel., 70; 6 How. St. Tr. 879.

Hale, C.J. (*k*), considered that the offence of treason had been committed. Hale's reasons for dissenting were—

"(1) Because it seemed but an unruly company of apprentices among whom that custom of pulling down bawdy-houses had long obtained. (2) Because the finding to pull down bawdy-houses, might reasonably be intended two or three particular bawdy-houses only. (3) Because certain statutes, 1 Mar. c. 12, and 3 & 4 Edw. 6, c. 5, and the case of the Earls of Gloucester and Hereford, in 20 Edw. 1, showed that there might well be 'great riots and contempts, but no levying of war against the King.'"

The defendants were, however, executed as traitors.

At the present day riots arising out of attacks upon individuals or for private objects are less common than those connected with political or supposed public grievances. But in many of the popular disturbances during the first half of the last century, trials and convictions for riots and unlawful meetings have taken place, in which, according to the strict letter of the authorities, the offenders were within the law of treason. In the case of riots, the special statutes as to the more aggravated acts of aggression would prevent the application of the doctrine of merger, and most unlawful assemblies of a treasonable character would also come within the scope of some statute, so that it is not here necessary to dwell farther upon the "private nature" of the designs forming the groundwork of the offence of riot. Upon this subject the provisions of the Treason Felony Act, 1848, may now be consulted (*l*).

(*k*) See 1 Hale P. C. 133.
(*l*) 11 Vict. c. 12. See *post*.

WITHOUT THE AUTHORITY OF THE LAW.

On this part of the definition the following passage from Hawkins may be quoted (*m*) :

"But in some cases, where the law authorises force, it is not only lawful but also commendable to make use of it ; as for a sheriff or a constable, or perhaps even for a private person, to assemble a competent number of people in order with force to suppress rebels or enemies or rioters (*n*), and afterwards with force actually to suppress them ; or for a justice of the peace, who has a just cause to show a violent resistance, to raise the *posse comitatus* in order to remove a force in making an entry into or detaining lands. Also, it seems to be the duty of a sheriff or other minister of justice, having the execution of the King's writs, and being resisted in endeavouring to execute the same, to raise such a power as may effectually enable them to overpower any such resistance ; yet it is said not to be lawful for them to raise a force for the execution of a civil process unless they find a resistance ; and it is certain that they are highly punishable for using any needless violence or outrage therein."

When Sir Francis Burdett was arrested on the Speaker's warrant, the Serjeant-at-Arms executed the warrant with the aid of the military, and in the action brought against him it was held to be a question for the jury whether there was an undue display of power or harshness, but it seems to have been considered that if the occasion required it the military might be applied to in the first instance (*Burdett* v. *Colman* (1811), 14 East, 163 ; *Burdett* v. *Abbott* (1811), 14 East, 1 ; 4 Taunt. 401 ; *Redford* v. *Birley* (1822), 1 St. Tr. (N.S.) 1176 ; 3 Stark. N. P. 92). The distinction pointed out by Hawkins (*o*) between a man assembling

(*m*) Hawk. P. C., Vol. II., Bk. I., c. 65, s. 2.
(*n*) *R.* v. *Inhabitants of Wigan* (1749), 1 W. Bla. 47.
(*o*) 1 Hawk. P. C., Vol. II., Bk. I., c. 65, s. 10. See also Viner's Abridgment ("Riots," A., 5, 6), and extract from Cr. Law Com. Rep., *ante*, p. 2.

his friends for the protection of his house, and a man calling his friends to assist him against an expected attack on his way to market may also be deemed an instance of an assembly authorised by the law, and one which, for the reasons given by Hawkins, the law refuses to recognise. It has also been laid down that a man may not arm himself and assemble his friends in the defence of his close. (*Per* HEATH, J., in *R.* v. *Bishop of Bangor* (1796), 26 St. Tr. 523; Erskine's Speeches, Vol. V., p. 177 (ed. 1827); Speeches of Thomas Lord Erskine, Reeves and Turner (1880), p. 509; and *per* HOLT, C.J., in *R.* v. *Soley* (1707), 11 Mod. 116; 1 Russ. Cr. & M., 6th ed., 570). See, further, as to the duties and powers of the military called in aid of the civil authorities, *post*.

WHAT CONDUCT AMOUNTS TO A GUILTY PARTICIPATION IN A RIOT.

It is important here to mark the distinction between accidental riots arising out of legal assemblies, and those which spring from illegal assemblies, or are premeditated. It has been already observed that the happening of a sudden quarrel among those lawfully assembled is an affray (*p*). If a riot ensues then only those who take actual part in it will be guilty. Their mere presence affords no presumption of their concurrence in the joint design. But where the assembly is unlawful, although no affirmative proof may be given of the knowledge of each individual of the joint design, yet it is manifest that those present appear to countenance *all* the illegal proceedings, and are exposed to great hazards from the difficulty of showing that they were

(*p*) *Ante*, p. 36.

not the partakers in the criminal intent. They are bound in law to know that the meeting is unlawful, and therefore bound to absent themselves, even if they do not actively endeavour to suppress the meeting. Certain it is that those engaged in dispersing it cannot distinguish between the active and the unoffending part of the assembled mob. But when there is a premeditated design to commit the riot, then all those joining in that design expose themselves to still greater risks. The clear principle of law applicable to every species of offence committed by several acting in concert and company together, is that :

"If many are present at the time when the breach of the law takes place, having one common design in view, and acting in common consent, although they do not all take share in the performance of the very act which is the subject of the indictment, yet by affording countenance, encouragement, and protection to the persons who actually perpetrate the crime, they are all equally guilty in the eye of the law" (*q*).

Those who are aiding, abetting, and assisting, need not be within view of the fact if they are so placed as to prevent any interruption to those engaged in the actual outrages. When cognisant of the design, and engaged in aiding and assisting its execution, they are criminally responsible for all that is done in pursuance of it, and cannot shelter themselves under the excuse that the matter was carried further than they intended. The reason of this is probably not only because of the impossibility of distinguishing the degrees of guilty intention, but because their neglect to perform the undoubted duty incumbent upon them as citizens—to

(*q*) From the charge of TINDAL, C.J., at Stafford, in *R.* v. *Harris and Others* (1842), 1 Car. & M. 664. See also the summing up of PARKE, B., in *R.* v. *Williams and Vernon* (1848), 6 St. Tr. (N.S.), at p. 779.

put a stop to the disturbance—affords an additional proof of their complete complicity.

An apt illustration may be drawn from the "Peterloo Riots." In *Redford* v. *Birley* (1822), 3 Stark. N. P. 118; 1 St. Tr. (N.S.) 1071, which was an action against several members of the yeomanry for injury inflicted by them on the plaintiff upon the occasion referred to, one ground of defence was that, being engaged in executing a warrant, they acted in self-defence. Upon this, HOLROYD, J., observed:

"There is strong evidence that in this particular part where the plaintiff was there was a great degree of resistance" (not, it is to be noticed, that the plaintiff himself was engaged in it), "and if there were the cavalry and soldiers on one side and the mob on the other, then the act of one man in the mob would be the act of all, if the mob were at that time acting illegally; and if any one of them began his attack on the military before there was a prior attack by the military, then the military would be at liberty to proceed in their own defence against all those persons who were acting in concert with the individual by whom the military were at first opposed."

A case of *R.* v. *Wallis* (1703), 1 Salk. 334, may be here mentioned, and in the course of the trial there was laid down the principle that:

"If a man begin a riot, and the same riot continue, and an officer be killed, he that began the riot would, if he remained present at it, be a principal murderer, though he did not commit the act" (*r*).

This principle of joint liability has received a recent illustration in the case of *R.* v. *Coney and Others* (1882), 8 Q. B. D. 534; 46 J. P. 404; 51 L. J. M. C. 66;

(*r*) See *R.* v. *McNaughton and Others* (1881), 14 Cox C. C. 576. See also the first, second and third resolutions in *The Sissinghurst House Case* (1673), 1 Hale P. C., 461.

46 L. T. (N.S.) 307 ; 15 Cox C. C. 46, where the defendants were charged upon indictment with assaults. They had formed part of a crowd standing round a ring formed of posts and ropes, within which B. and M. were stripped and had fought for about an hour. The defendants were not speaking or betting on the combatants, or taking any part in the fight. One of them was hemmed in by the crowd and could not have have got away if he had wanted to do so. It was laid down by the chairman of quarter sessions that :

"All persons who go to a prize fight to see the combatants strike each other, and who are present when they do so, are in point of law guilty of an assault. If they were not casually passing by, but stayed at the place, they encouraged it by their presence, although they did not do or say anything."

Upon this ruling of the chairman the prisoners were found guilty. The point raised on their behalf was whether voluntary presence at a prize fight is evidence of aiding and abetting the assaults mutually committed by the combatants. It was held that the conviction must be quashed, as the direction of the chairman amounted to this, that the mere presence of persons at a prize fight unexplained is conclusive proof of intending to encourage the fight, although they are not seen to do or say anything ; and that the finding of the jury was in obedience to that direction, without exercising any judgment of their own upon the sufficiency of the evidence as to encouraging or aiding and abetting the fight :

"The whole question therefore for us to determine, as a matter of law, is whether inactive presence at a prize fight as a voluntary spectator thereof, amounts of itself to such encouragement of it as to render a man amenable to the criminal law as an aider and abettor in that breach of the peace" (*s*).

(*s*) *Per* HAWKINS, J., 15 Cox C. C., at p. 62. See also *ante*, p. 38.

For the prosecution certain dicta were relied upon of Patteson and Littledale, JJ., in *R.* v. *Perkins* (1831), 4 C. & P. 537), *R.* v. *Murphy* (1833), 6 C. & P. 103, and *R.* v. *Hargrave* (1831), 5 C. & P. 170, in support of the conviction ; but, without being dissented from, they were considered as applicable only to the particular facts of the cases in which they occurred. To constitute an aider and abettor, some active steps must be taken by word or action with the intent to instigate the principal or principals :

"Encouragement does not of necessity amount to aiding and abetting ; it may be intentional or unintentional ; a man may unwittingly encourage another in fact by his presence, or he may encourage intentionally by expressions, gestures, or actions intended to signify approval. In the latter case he aids and abets, in the former he does not. It is no criminal offence to stand by a mere passive spectator of a crime, even of a murder (*t*). Non-interference to prevent a crime is not itself a crime. But the fact that a person was voluntarily and purposely present, witnessing the commission of a crime, and offered no opposition to it, though he might reasonably be expected to prevent it and had the power to do so, or at least to express his dissent, might, under some circumstances, afford cogent evidence upon which a jury would be justified in finding that he wilfully encouraged, and so aided and abetted. But it would be purely a question of fact for the jury whether he did so or not. So, if any number of persons arrange that a criminal offence shall take place, and it takes place accordingly, the mere presence of any of those who so arranged it would afford abundant evidence for the consideration of a jury of an aiding and abetting" (*u*).

So in *R.* v. *Atkinson* (1869), 11 Cox C. C. 332, where the defendant was with others charged with a riot, Kelly, C.B., expressly ruled, "that the mere presence of a person among the rioters, even though he possessed power and failed to exercise it of stopping

(*t*) 1 Hale P. C. 616.
(*u*) *Per* Hawkins, J., 15 Cox C. C., at p. 63. See also *ante*, p. 38.

the riot, did not render him liable on such a charge." So also in *R.* v. *Taylor* (1875), L. R. 2 C. C. R. 147 ; 13 Cox C. C. 68 ; 32 L. T. (N.S.) 409, COCKBURN, C.J., said : "To support an indictment against a man as an accessory by abetting an offence, there must be some sort of active proceeding on his part ; he must incite or procure or encourage the act "; for, as was observed in reference to complicity in a charge of unlawful assembling, by ALDERSON, B., in the course of his summing up to the jury in *R.* v. *Rankin* (1848), 7 St. Tr. (N.S.), at p. 789 : "There are many people present at an unlawful assembly, who, though it is very imprudent on their part to be present, ought not to be convicted of an offence. Many will attend there simply for curiosity. It is very imprudent to do so ; they must not blame anybody but themselves if juries misconstrue their motives ; but if you were really satisfied that they were there by accident or from curiosity alone, without any bad motives or without having any part or participation in the unlawful assembly itself you ought not to find them guilty ; because although their bodies are there, their minds are absent from the unlawful assembly" (*y*). In *R.* v. *Graham and Burns* (1888), 16 Cox C. C. 433, CHARLES, J., says :

"Plenty of people may find themselves in an unlawful assembly who are guilty of no crime at all ; you may find yourself there by the merest accident ; you may very much want to get away, but find yourself unable to do so. It would be idle to say in either of those cases that you would be indicted for an unlawful assembly."

Although some evidence of complicity, in addition to evidence of mere presence, is necessary, yet there is

(*y*) See also *per* PARKE, B., in *R.* v. *Williams and Vernon* (1848), 6 St. Tr. (N.S.), at p. 780.

no doubt that in some cases but slight additional evidence would be required. This is an important matter, and a few of the cases in which the sufficiency of the evidence of participation was discussed will now be noticed. In this connection we would also refer to the general observations already made.

Thus, in *Clifford* v. *Brandon* (*ubi supra*), it was laid down that "taking part by words, gestures, or signs, or by wearing the badge or ensign of the rioters," is sufficient to show that a person present with the mob is one of the rioters themselves.

Again, in *R.* v. *Hunt* (1820), 1 St. Tr. (N.S.) 438, Bayley, J., referring to certain evidence as to inscriptions on banners carried by persons at "Peterloo," said:

> "Now, if the case is to be made illegal in respect of the banners, it is not necessarily illegal on that account as to every man present at the meeting, but would only be illegal as to those particular persons who had adopted that banner, or who, with a full knowledge of the existence of that banner, had given their co-operation and countenance to the meeting" (*z*).

And in *R.* v. *Royce* (1767), 4 Burr. 2073, upon an indictment under the repealed clauses of the Riot Act, the jury found specially that at the time the said persons unknown began to demolish the dwelling-house the defendant was then present, and encouraging and abetting the others in demolishing the dwelling-house, by shouting and using expressions to incite the others so to act; but the jury also found that the defendant did not, with his own hands, do any act whatever of demolition. He was, however, held to have been rightly convicted as a principal in the second degree.

(*z*) See *post*, p. 76, as to proof of inscriptions on banners.

In some instances, indeed, more definite proof of intent may be necessary, as where, on the occasion of the Bull Ring Riots (*a*) at Birmingham in 1839, one Wilkes and others were charged, under 7 & 8 Geo. 4, c. 30, with feloniously demolishing a house. Wilkes was shown to have harangued a crowd at Holloway Head in a violent manner, and led them in a direction towards the police office. The mob attacked the house of Mr. Bourne, broke the shutters and windows, and proceeded to gut the house and set it on fire. The original design of the meeting at Holloway was not shown, nor whether it was the same mob who had assembled there, and afterwards destroyed Mr. Bourne's house. Upon these facts Mr. Wilkes, not having been proved to have been at the fire, was acquitted. In a similar case at Stafford the prisoner was convicted, although he came up after the fire had commenced, he having incited the mob to perpetrate the act.

For the sake of convenience the general mode of putting the question to the jury under this statute is subjoined, as laid down by TINDAL, C.J., at the Bristol Special Commission (*b*):

"In cases of this description you will consider whether the individual charged was one of the persons constituting a riotous assemblage, which was effecting the destruction of the building. If he formed part of such riotous assembly at the time the act of demolition commenced, or if he wilfully joined such riotous assembly, so as to co-operate with them whilst the act of demolition was going on, and before it was completed, in either case he comes within the description of the offence, and

(*a*) *R.* v. *Neale* (1839), 9 C. & P. 431; and *R.* v. *Howell* (1839), 3 St. Tr. (N.S.) 1087; 9 C. & P. 437, tried at Warwick Assizes, 1839, before LITTLEDALE, J., where the subject of guilty participation in and liability for riotous acts is fully discussed, and other authorities cited.

(*b*) *The Bristol Riots* (1832), 3 St. Tr. (N.S.), at p. 7.

within the penalties imposed by the Act, although he may not have been a person who actually assisted with his own hand in the demolition of the building."

The same learned judge, in the case of *R.* v. *Harris* (1842), 1 C. & M., at p. 668, thus expressed himself:

"In order to make out the charge against the prisoners you must be satisfied either that they were the very parties who actually did destroy and demolish, or begin to destroy and demolish, this house by the agency of fire, which was the intention of the mob, or that they, being on the spot at the time, were taking such steps in the transaction that they may be said to have encouraged and assisted, and by their acts have aided and abetted in the object and design of destroying or beginning to destroy the house."

In *R.* v. *Hunt* (1820), 1 St. Tr. (N.S.) 489 ; 3 B. & A. 566, the defendant and others were indicted for conspiracy to unlawfully meet together and to cause other persons to meet with them, and also for an unlawful meeting, for the purpose of exciting discontent and dissatisfaction. The defendant Hunt had presided at this meeting. It was held that resolutions passed at a former meeting assembled a short time before in a distant place, at which Hunt had also presided, the avowed object of both meetings being the same, were admissible in evidence to show the intention of Hunt in assembling and attending the meeting in question. It was further held that evidence that large bodies of men came to the latter meeting from a distance, marching in regular order ; that within two days of the same great numbers of men were seen training and drilling before daybreak at a place from which one of these bodies had come to the meeting, and that on their discovering the persons who saw them, they ill-treated them, and forced one of them to take an oath never to be a King's man

again ; and that another body of men, in their progress to the meeting, on passing by the house of one of the persons who had been so ill-treated, expressed their disapprobation of his conduct by hissing, was admissible for the purpose of showing the character and intention of the meeting in question.

From this case can easily be gathered the nature of the proof generally tendered in cases of what may be called organised or premeditated riots, and by which it is intended to show to what extent the persons charged are implicated in the actual disturbance as inferred from their previous conduct.

Hawkins (*c*) says :

"Also it seems to be certain that if a person seeing others actually engaged in a riot do join himself unto them and assist them therein, he is as much a rioter as if he had at first assembled with them for the same purpose, inasmuch as he hath no pretence that he came innocently into the company, but appears to have joined himself unto them with an intention to second them in the execution of their unlawful enterprise, and it would be endless as well as superfluous to examine whether every particular person engaged in a riot were, in truth, one of the first assembly, or actually had a previous knowledge of the design thereof" (*d*).

After this collection of some of the principal authorities on the point as to the nature of the participation in the riot from which guilty complicity is to be inferred, the remarks of TINDAL, C.J., in his charge at the Bristol Special Commission may be usefully cited :

"Let me impress upon the attention of all those who, from idleness, curiosity, or mere thoughtlessness, suffer themselves to

(*c*) Bk. I., Vol. II., Hawk. P. C., c. 65, s. 3, 7th ed.

(*d*) See also *R.* v. *Midwinter and Sims* (1749), Foster's Crown Cases and Discourses, 3rd ed., 415 ; *Sissinghurst House Case* (1673), 1 Hale, 463 ; *R.* v. *Sharpe* (1848), 3 Cox C. C. 288.

form a part of a riotous and disorderly meeting, that they subject themselves, unconsciously, to the danger of punishment for crimes which they never contemplated; for, where many are collected together in the prosecution of an illegal object, it is often impossible to discriminate between the active and the unoffending part of the mob. It requires evidence on the part of the accused, which they may not be able to produce, in order to defend themselves against the charge of participation in the guilt of others. The only safe course for the peaceable and well-disposed, on all occasions of popular tumult, is this, to lend their ready aid to assist the magistrates in suppressing it, or, at all events, to forthwith separate themselves from the rioters" (*e*).

INDICTMENT.

The material averments in an indictment for riot are that "the defendants, to the number of three and more, did unlawfully, riotously, and routously assemble and gather together to the terror and disturbance of the liege subjects." It is usual, after the statement of the names of the persons charged, to add "together with divers other persons whose names are to the jurors aforesaid unknown," for the reasons indicated at p. 34, *ante* (*f*), and in *R.* v. *Scott and Hams* (1761), 3 Burr. 1262. It is very usual in indictments for riot and assault upon an individual to add a count charging the defendants with a common assault upon him (as an instance of this, see the description of the indictment in the case of *R.* v. *Coney and Others*, *ante*, p. 40), for the grand jury may ignore the bill as to the riot and find a

(*e*) *The Bristol Riots* (1832), 3 St. Tr. (N.S.), at p. 7; 5 C. & P. 264. See also *R.* v. *Rankin*, *ante*. Further on the question of what amounts to participation in riots may be consulted: *R.* v. *Duffield* (1851) 5 Cox C. C. 404; *R.* v. *Rowlands* (1851), 5 Cox C. C. 436; and *R.* v. *Druitt* (1867) 10 Cox, C. C. 592, cases relating to combinations among workmen. This last-mentioned case, however, was dissented from in *Gibson* v. *Lawson* (1891), 2 Q. B. 545; 61 L. J. M. C. 9; 17 Cox C. C. 354; 55 J. P. 485.

(*f*) See also *R.* v. *Sudbury* (1699), 2 Salk. 593; 12 Mod. 262; Anonymous (1689), 3 Salk. 317, and *R.* v. *Scott* (1762), 1 W. Bla. 350.

true bill upon the count for assault only (*R.* v. *Fieldhouse* (1775), Cowp. 325); and in such cases it is sometimes advisable to include in the indictment a count charging the defendants with conspiracy to assault an individual. If the terms "riotously and routously" are found throughout the indictment, the defendants cannot be convicted of an affray, or receive judgment for an inferior offence when two only are found guilty (*R.* v. *Sudbury* (1699), 2 Salk. 593; 1 Ld. Raym. 484).

In the case of *R.* v. *Soley* (1707), 11 Mod. 594, where the indictment was framed so that "riotously" could not be separated from the rest of the charge, it was held that the prisoners could not be convicted of an assault, no proof of a riot being given.

The indictment need not include the allegation "with force and arms," as the term "riotously" sufficiently implies violence without their insertion (*R.* v. *Wynd* (1729), 2 Stra. 833; 2 Sess. Cas. 13). The allegation "*Vi et armis*" is furthermore rendered unnecessary by the 14 & 15 Vict. c. 100, s. 24, which expressly declares that the omission of the words "with force and arms," or "against the peace," shall not vitiate an indictment.

The indictment should state the unlawful act which the defendants assembled to commit, in order that the court may judge of the legality or illegality of the common design (*R.* v. *Gulston* (1705), 2 Ld. Raym. 1210).

In the cases of *R.* v. *Hughes* (1830), 4 C. & P. 373, and *R.* v. *Cox* (1831), 4 C. & P. 538, mentioned *ante*, p. 42, it was held that the omission of the allegation "*in terrorem populi*" was fatal to a conviction for riot upon an indictment so drawn, but that the defendants

upon such an indictment might be convicted of an unlawful assembly. But an indictment following the exact words of 1 Geo. 1, st. 2, c. 5, s. 1, for remaining assembled one hour after proclamation made, need not charge the original riot to have been "*in terrorem populi*"; "the indictment pursues the words of the Act on which it is framed" (*R.* v. *James* (1831), 5 C. & P. 153).

Where several were indicted for a riot, it was moved that the prosecutor might name two or three, and try the indictment against them, and that the rest might enter into a rule to plead guilty if the others were found guilty. The rule was made accordingly, to prevent the charges in putting them all to plead (*R.* v. *Middlemore* (1689), 6 Mod. 212; 3 Salk. 317) (*g*).

EVIDENCE.

In addition to what has been said above as to participation in a riot, it may be said generally that evidence is admissible to show that the meeting complained of caused alarm and apprehension, that complaints were made to the civil authorities, and the measures taken by them upon such information. Where the question is with what intent persons assembled, *e.g.*, to drill, it is permissible to give in evidence declarations made by those assembled and in the act of drilling; and, further, declarations by others proceeding to the place, and solicitations made by them to others to accompany them declaratory of their object (*Redford* v. *Birley* (1822), 1 St. Tr. (N.S.), at p. 1234; 3 Stark. 76). With reference to banners or flags carried by persons

(*g*) The indictment, or information, will be found set out in full in the reports of many of the cases referred to in these pages.

in the crowd. "There is no authority to show that in a criminal case banners, ensigns, or other things exposed to view must be produced or accounted for on the part either of the prosecution or defence. Inscriptions used on such occasions are the public expression of the sentiments of those who bear and adopt them, and have rather the character of speeches than of writings" (*per* ABBOTT, C.J., in *R.* v. *Hunt* (1820), 1 St. Tr. (N.S.) 492) (*h*). "Flags, you know, speak, because the language of a flag is silent speech; it speaks to the eye if not to the ear" (*per* BAYLEY, J., in *R.* v. *Dewhurst* (1820), 1 St. Tr. (N.S.) 598). In this last-mentioned case evidence of inscriptions on flags which were not unfurled was not admitted (*i*).

It was held by the judges at the Special Commission of 1830 at Salisbury, that the prisoners must be identified as part of the crowd before the riot is proved, the decision being afterwards approved of by the fifteen judges (*k*). It has, however, been since held in a case of riot that the prosecution is entitled to prove any of the acts of the rioters before the others are connected with the riot, and this is in conformity with the practice in cases of conspiracy (*l*).

(*h*) See also *R.* v. *O'Connell* (1844), 5 St. Tr. (N.S.) 1; Arm. & Tre. 235; and *R.* v. *Aickles* (1784), 1 Lea. 294.

(*i*) As to the knowledge of the contents of banners and the proper inferences to be drawn from countenancing them, see also *R.* v. *Hunt*, *ante*, p. 69; *R.* v. *Howell* (1839), 3 St. Tr. (N.S.) 1087; 9 C. & P. 437; *R.* v. *Simpson* (1842), 4 St. Tr. (N.S.) 1387; C. & M. 669; *R.* v. *Sharpe* (1848), 6 St. Tr. (N.S.) 1125, 3 Cox C. C. 288; *R.* v. *Duffield* (1851), 5 Cox C. C. 404; *R.* v. *Rowlands* (1851), 5 Cox C. C. 436; and *Humphries* v. *Connor* (1864), 17 L. R. Ir. 1, cited in *O'Kelly* v. *Harvey* (1882), 15 Cox C. C. 435; *R.* v. *Graham* (1888), 16 Cox C. C. 420, and *R.* v. *Burns and Others* (1886), 16 Cox C. C. 357.

(*k*) See, however, *R.* v. *Rooney* (1842), 2 Craw. & D. 381.

(*l*) *R.* v. *Cooper*, Staff. Sum. Ass. 1850, WILLIAMS, J., cited in 1 Russ. on Cr. & M. 585, 6th ed.

By the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), defendants may now give evidence on their own behalf.

Punishment.

The punishment at common law for riot is fine or imprisonment or both ; and by a statute, 3 Geo. 4, c. 114, passed in 1822, hard labour may be imposed either in addition to or in lieu of other punishment. Formerly, it appears, offenders were sometimes punished with the pillory, but such punishment is now taken away by the statute 56 Geo. 3, c. 138.

Costs.

By 7 Geo. 4, c. 64, s. 23, it is enacted that when any prosecutor or other person shall appear before any court *on recognizance or subpœna* to prosecute or give evidence against any person indicted for certain misdemeanors, amongst them being "any riot," such court may authorise payment of costs and expenses of the prosecutor and witnesses for the prosecution, together with a compensation for their trouble or loss of time in attending before the examining magistrate and otherwise carrying on the prosecution, in the same manner as by s. 22 of the same statute they can order in cases of felony.

Witnesses for the defence who have been examined before the magistrate and bound over to give evidence on the trial, may have their expenses allowed by the court (30 & 31 Vict. c. 35, ss. 3—5). See also the Poor Prisoners' Defence Act, 1903 (3 Edw. 7, c. 38).

It will be noticed that the words of the original statute of Geo. 4, are "on recognizance or subpœna,"

and in one case in which the prosecutor was not bound over, but included his own name in the subpœna as a witness, PARKE and COLERIDGE, JJ., held that he was entitled to costs as prosecutor and as a witness (*R.* v. *Sheering* (1836), 7 C. & P. 440). But it seems doubtful whether where the prosecutor in a case of misdemeanor is not bound over to prosecute at the assizes, the court of assizes has power to allow his expenses under s. 23 of 7 Geo. 4, c. 64: if, however, the witnesses be subpœnaed, their expenses may be granted (*R.* v. *Jeyes* (1835), 3 A. & E. 416). All the judges, however, agreed that this power to grant costs did not apply when the prosecutor had removed the indictment by writ of *certiorari* into the King's Bench, although he had preferred the indictment according to his recognizance (*R.* v. *Richards* (1828), 8 B. & C. 420); and in 1 Archbold's Peel's Acts (3rd ed.), p. 214, where it appears that this only applies where the removal is by the prosecutor; and in another case, where he preferred the indictment without being under recognizance and removed it by *certiorari*, and it was tried at *nisi prius*, it was held that neither the court at *nisi prius* nor the Court of King's Bench could award costs under this statute (*R.* v. *Johnson* (1827), 1 Moo. C. C. 173; *R.* v. *Treasurer of Exeter* (1829), 5 M. & R. 167; 1 Russ. C. & M. 100). If the costs are not paid by the treasurer of the county or borough in accordance with the order, that officer will be liable to indictment for disobedience to the order of the court (*R.* v. *Jeyes*, *ubi supra*; *R.* v. *Sheering*, *ubi supra*). There is no remedy by way of *mandamus* to the treasurer to compel him to pay such costs, the remedy by indictment for disobedience is the only remedy; and to subject such

officer to this remedy by indictment, the entire order of the court must have been served upon him (*R.* v. *Jones* (1840), 2 Moo. C. C. 171; 9 C. & P. 401). Section 77 of the Malicious Injuries Act, 1861 (24 & 25 Vict. c. 97), provides for the payment of costs in prosecutions for the misdemeanors committed in contravention of s. 12 of that statute, being the misdemeanors of riotously and tumultuously injuring buildings or machinery (*m*).

Regulations made by the Secretary of State govern the allowances payable to prosecutors and witnesses in criminal prosecutions, see Stat. R. & O. (1904). No. 1219 (*n*).

CERTIORARI.

The statute 21 Jac. 1, c. 8, s. 4, deals with the removal by *certiorari* of indictments for riot, forcible entry, or assault, from the courts of quarter sessions into the King's Bench Division. It imposes various conditions upon persons so wishing to remove indictments for trial outside the counties in which the offences charged were committed. As to procedure upon trial in the King's Bench Division, see Short and Mellor's Crown Office Practice, p. 187, and the Crown Office Rules, 1906, and as to costs upon *certiorari*, see the cases of *R.* v. *Oastler* (1874), L. R. 9 Q. B. 132; 43 L. J. Q. B. 42; *R.* v. *Bayard*, [1892] 2 Q. B. 181; *R.* v. *Woodhouse* (1906), 75 L. J. K. B. 501, and the Crown Office Rules, 1906.

(*m*) See this section, *post*.

(*n*) See Archbold's Cr. Pl., 23rd ed., p. 249.

EXPENSES OF SUPPRESSING RIOTS.

By 41 Geo. 3, c. 78, s. 2, any two justices within their jurisdiction may, by writing under their hands, order any reasonable and necessary allowance for extraordinary expenses incurred in the execution of their duty in cases of tumult, riot, and felony, subject to the approval of the next general quarter sessions, who may order the treasurer of the county to pay the high constable such sums as they deem reasonable. Payments to voluntary special constables to suppress a riot, and extra payment for the extraordinary exertions of the ordinary constables, are "reasonable and necessary allowances . . . for . . . extraordinary expenses" within the meaning of this statute (*R.* v. *Leicester JJ.* (1827), 7 B. & C. 6). As to the office of high constable, and the substitution of other officers for the performance of a high constable's duties, see the High Constables Act, 1869 (32 & 33 Vict. c. 47). The position of chief constables and the police generally, is affected by the Local Government Act, 1888 (51 & 52 Vict. c. 41), but the details of such alterations need not be given here.

The expenses of special constables are also provided for by the Special Constables Act, 1831 (1 & 2 Will. 4, c. 41, s. 13), and by the Special Constables Act, 1838 (1 & 2 Vict. c. 80) (relating to their appointment during disturbances caused by labourers employed upon railways, canals, and public works). See, as to order for payment of expenses in these cases: *R.* v. *Cheshire Lines Committee* (1874), L. R. 8 Q. B. 344; 37 J. P. 806; 42 L. J. M. C. 100; 28 L. T. (N.S.) 808; and in boroughs under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50, s. 196, Scheds. 4, 5), fixing a scale

of remuneration to borough special constables, see, as to statute, 1 & 2 Will. 4, c. 41, s. 13, the cases of *R.* v. *Middlesex JJ.* (1868), 32 J. P. 661; 18 L. T. (N.S.) 680; *R.* v. *Hamilton* (1868), L. R. 3 Q. B. 718). Special constables in the metropolitan police district may be paid out of the Metropolitan Police Fund (Police Act, 1890 (53 & 54 Vict. c. 45), s. 28).

The Riot (Damages) Act, 1886, *post*, does not affect the question of expenses incurred in the suppression of riots.

STATUTORY RIOTS.

Demolishing Buildings (Act of 1861).

The statute 7 & 8 Geo. 4, c. 27, repealed the earlier statutes (9 Geo. 3, c. 29; 52 Geo. 3, c. 130; 56 Geo. 3, c. 125, and 1 Geo. 1, st. 2, c. 5, ss. 4, 6), so far as it relates to rioters demolishing houses, etc., and in a consolidating statute (7 & 8 Geo. 4, c. 30), passed in the same year (1827), the provisions of the repealed statutes with regard to riotous demolition of property were re-enacted.

The repealing statute (24 & 25 Vict. c. 95) of the group of Criminal Law Consolidation Acts of 1861, however, repealed the whole of 7 & 8 Geo. 4, c. 30, and the offences provided against in that statute were dealt with in the Malicious Injuries to Property Act, 1861 (24 & 25 Vict. c. 97). Section 11 of 24 & 25 Vict. c. 97, is a re-enactment of s. 8 of 7 & 8 Geo. 4, c. 30, with certain additions shown in italics, as follows:

"If any persons riotously and tumultuously assembled together to the disturbance of the public peace shall unlawfully and with force demolish, or pull down or destroy, or

begin to demolish, pull down, or destroy, any church, chapel, meeting-house, or other place of divine worship (*o*), or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, granary, *shed, hovel, or fold*, or any building or erection used *in farming land*, or in carrying on any trade or manufacture, or any branch thereof, *or any building, other than such as are in this section before-mentioned, belonging to the Queen, or to any county, riding, division, city, borough, poor law union, parish, or place, or belonging to any university, or college or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution*, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, or any steam engine or other engine for sinking, working, *ventilating*, or draining any mine, or any staith, building, or erection used in conducting the business of any mine (*p*), or any bridge, waggon-way, or trunk for conveying minerals from any mine, every such offender shall be guilty of felony, and being convicted thereof shall be liable . . . to be kept in penal servitude for life . . ." (*q*).

Section 12 of 24 & 25 Vict. c. 97, is as follows:

"If any persons riotously and tumultuously assembled together to the disturbance of the public peace shall unlawfully and with force injure or damage any such church, chapel, meeting-house, place of divine worship, house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, granary, shed, hovel, fold, building, erection, machinery, engine, staith, bridge, waggon-way, or trunk, as is in the last preceding section mentioned, every such offender shall be guilty of a misdemeanour, and being convicted thereof

(*o*) As to compensation for damage to churches, etc. see The Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38), s. 7, *post*.

(*p*) In *Barwell* v. *Hundred of Winterstoke* (1850), 14 Q. B. 704, it was held that a wooden trough by which water was conveyed from a spring to a pool at a distance from the mine, for the purpose of washing the ore, was an erection used for conducting the business of a mine within 7 & 8 Geo. 4, c. 31, s. 2, now repealed by the Riot (Damages) Act, 1886, *post*.

(*q*) By the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1, a court which can award penal servitude may award any term not less than three years, or imprisonment for any term not exceeding two years with or without hard labour. The power to award the punishment of solitary confinement has been taken away (S. L. R. 1893).

shall be liable . . . to be kept in penal servitude for any term not exceeding seven years, . . . : Provided that if upon the trial of any person for any felony in the last preceding section mentioned, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any offence in this section mentioned, then the jury may find him guilty thereof, and he may be punished accordingly."

Under the 7 & 8 Geo. 4, c. 30, s. 8, it was held that in order to convict of the offence of beginning to demolish a house, etc., the jury must be satisfied that the rioters intended to demolish the whole house, and this led to numerous acquittals (*r*). Section 12 of 24 & 25 Vict. c. 97, just quoted, was therefore drafted for the express purpose of providing both for cases where there is no sufficient evidence of an intention to proceed to a total demolition of the house, etc., and also for cases where no such intention ever existed among those riotously and tumultuously assembled. The latter part of the section, therefore, enables the petty jury who try an indictment for any felony mentioned in s. 11, to convict of the offence created by s. 12 if they are not of opinion that an offence within the preceding section has been satisfactorily proved (*s*). This power, it will be noticed, is limited to the petty jury, therefore in cases of doubt it will be more prudent to indict for the

(*r*) See the cases quoted, *post*, as to what amounted to a "demolition" within that section.

(*s*) Under 7 & 8 Geo. 4, c. 30, the punishment for felonious rioting was that of death, but by 4 & 5 Vict. c. 56, and 6 & 7 Vict. c. 10, this was reduced to transportation for life, now altered to penal servitude for life. It may also be noticed that 7 & 8 Geo. 4, c. 30, s. 8, was made by 2 & 3 Will. 4, c. 72, to include felonious and riotous demolition of *threshing machines*, to compensate for damage to which the Hundred was made liable. 2 & 3 Will. 4, c. 72, remained in force down to 1886, and was repealed by 49 & 50 Vict. c. 38 (The Riot (Damages) Act, 1886). See as to damage to such machines, 24 & 25 Vict. c. 97, s. 15.

offence under s. 12, as in that case the grand jury may find a true bill under that section should they reject a bill under s. 11.

It may be premised that the decisions under 7 & 8 Geo. 4, c. 30, were, prior to the year 1886, of considerable importance as bearing upon the question of the liability of the Hundred to pay compensation for the damage done in the course of the riot; for the Hundred was formerly not liable to pay such compensation, except in cases where the rioting was felonious within the meaning of the statute. But, by the Riot (Damages) Act, 1886, felonious demolition of property is no longer necessary to be proved in order to entitle the owners thereof to compensation (*t*).

Although the cases under the statute 7 & 8 Geo. 4, c. 30, are now unimportant as regards the liability of the Hundred, yet they must still be referred to, because the language of s. 11 of 24 & 25 Vict. c. 97, above quoted, is almost a re-enactment of s. 8 of the earlier statute.

As the word "riotously" in s. 11 is not defined by the statute, the common law definition of riot must be resorted to, in order to determine whether an offence has been committed within the provisions of this section (*R.* v. *Langford* (1842), C. & M. 602; *S. C.*, *sub nom.* *R.* v. *Phillips*, 2 Moo. C. C. 252).

WHAT IS A "DEMOLITION" UNDER THE STATUTE.

The words of s. 11 are "demolish, pull down, or destroy," but there need not be a total demolition or destruction to constitute the offence. If the building

(*t*) See this statute in full, *post*.

or erection were reduced to a useless state of habitation or other purpose for which it was intended it would, according to the best authorities, be within the section. Thus when the house was broken into, the windows demolished, a considerable quantity of furniture burnt outside the house, and fires lighted on the floors of the various rooms, so that the house was rendered quite uninhabitable, the prisoners were held rightly convicted (*R.* v. *Harris* (1842), 1 C. & M. 661, *per* Tindal, C.J., Park, J., and Rolfe, B.) So also when a cottage was pulled down to the ground, except the chimney (*R.* v. *Langford* (1842), 1 C. & M. 602, *per* Patteson, J.)

As against these cases of *R.* v. *Harris* and *R.* v. *Langford*, however, must be placed the observations of Coleridge, J., in *R.* v. *Adams* (1842), 1 C. & M. 299, where the learned judge is reported to have said that the intention necessary to be proved under the statute must be "to leave the house no house at all." "If the prisoners intended to leave it still a house, though in a state however dilapidated, they are not guilty. If a man were to say, 'I have pulled down my house,' we should understand what he meant; the state of that house must be the state to which these people intended to reduce this. 'Demolish,' 'pull down,' or 'destroy,' are strong words and hard of proof."

The facts in *R.* v. *Adams*, were these, that during an election riot the house had been forcibly entered by the mob, and many of them said to the landlord "Turn out the bloody blues (the rival party) or we will have the house down." They destroyed every moveable they could find, and some fixtures, glasses, plates, china, chairs, windows, and window-frames; they wrenched

the bars away from one window, and in so doing tore down part of the brickwork in which the bars were fixed. On a cry being raised that the police were coming they quitted the premises. One witness, the daughter of the landlord, said, "As far as I saw they had done all they wanted to do, and were going away. I did not suppose that they were going to pull down the very walls of the house." The question was certainly left to the jury as to their intention, but it is submitted that the other cases cited show that the Act did not require such a total destruction as COLERIDGE, J., would seem, according to the report, to have thought essential.

There seems to be no reason for excluding from the operation of the statute any mode of destruction calculated to effect the demolition of the building, so it was held that if rioters destroy a house by fire this amounts to a felonious demolition of it within 7 & 8 Geo. 4, c. 30, s. 8, and the persons guilty of such an offence may be convicted on an indictment under that statute, and need not be indicted for arson (*u*).

WHAT IS A "BEGINNING TO DEMOLISH."

The construction put upon these words which occurred in the Act of 7 & 8 Geo. 4, c. 30, s. 8, as well as in the present section, is that the partial demolition must be with the intention to demolish the whole. The question in each case of incomplete demolition will be, for what reason did the mob leave off? Was it because

(*u*) *R.* v. *Harris* (1842), C. & M. 661; *R.* v. *Simpson* (1842), C. & M. 669; *R.* v. *Christian* (1842), 12 L. J. M. C. 26; *R.* v. *Howell* (1839), 3 St. Tr. (N.S.) 1087, 9 C. & P. 437; and see *R.* v. *Whiston* (1842), 2 Dow. (N.S.) 408.

they had completed their purpose, or was it because they were interrupted or expected to be interrupted; and if not interrupted, would they have destroyed the whole? If they leave off without being interrupted or perhaps without fear of interruption, this would doubtless be legitimate evidence of the absence of intention to completely demolish the house; and, on the other hand, if there be no direct evidence of the intention which the rioters originally had, what is actually done by them to the premises will be evidence from which juries, having regard to all the surrounding circumstances of the case, would be justified in drawing the inference that the felonious intention aimed at by s. 11 existed at the time the damage was done. The existence in the statute of s. 12, and of the powers therein contained of convicting for the misdemeanour upon an indictment for the graver offence under the earlier section will, no doubt, in cases where the intention is doubtful, be fully appreciated by juries.

The following extract from an elaborate summing up of LITTLEDALE, J., in *R.* v. *Howell* (1839), 3 St. Tr. (N.S.), p. 1144; 9 C. & P. 437, in the "Bull Ring riots," shows with great clearness what amounts to a "beginning to demolish" under this statute.

"In *Rex* v. *Thomas* (1830), 4 C. & P. 237," said his lordship, "which was decided by me, it appeared that the prisoner and others on the 15th of March, 1830, at about midnight, came to the house of the prosecutor, and that, having in a riotous manner burst open the door, they broke some of the furniture, all the windows, and one of the window-frames, and forced out a small iron bar; and that after doing this mischief they went away. It did not appear that there was anything to hinder the rioters from doing more damage if they had chosen so to do. I held in that case, 'that this will not be a beginning to demolish within the Act of Parliament, unless the jury shall be satisfied that the ultimate object of the rioters was to demolish

the house, and that if they had carried their intentions into full effect, they would, in point of fact, have demolished it. Now, here that is not so, for they came to do a great deal of mischief, and then go away, having manifestly completed their purpose, and done all the injury they meant to do.' A nearly similar rule is laid down by Lord Chief Justice TINDAL, in a case (*r*) where parties pursued an individual who took refuge in a house, and broke the windows and destroyed the furniture, and then went away; and in the case of *Rex* v. *Batt* (1834), 6 C. & P. 329, Baron GURNEY says: 'In the case of *Rex* v. *Thomas*, there was nothing to prevent the rioters from going on; and, in favour of life, it was inferred that, as they left off voluntarily, they never had any intention of proceeding further. But certainly that is not so here, because there is the interference of the police, and it was after the threats of the police that the mob desisted. If you are of opinion that this mob began to do mischief to the house, intending to persist in demolishing it if they had not been interrupted, the offence charged will have been committed.' There is no doubt that the rule of law, as there laid down, is applicable to this case. If part of the object of these rioters was to destroy and demolish this house, and they began to demolish it, they are clearly guilty of this felony. The demolition in this case was by means of fire; and although there is a specific enactment as to arson, yet if burning is the means of the demolition of the house, it is just as much within this enactment as the knocking down of the house by hammers or crow-bars, or anything else. If the mob went away without doing any act at all, they would not be guilty of this offence, whatever their intention might be; but if, having once begun it, they are prevented from going on with the act of demolition by the interference of the military, I am of opinion that this is a case clearly within this enactment" (*w*).

It was similarly held in *R.* v. *Price* (1833), 5 C. & P. 510, that an indictment for feloniously beginning to demolish a house cannot be supported unless the persons committing the outrage had an intention of destroying the house; and, therefore, when considerable damage

(*r*) *R.* v. *Price* (1833), 5 C. & P. 510.

(*w*) See also *Ashton's Case* (1830), 1 Lewin 296, cited in 1 Russell Cr. & M., 6th ed., p. 567.

was done to a house by a mob who did this with an intention of seizing a person who had taken refuge therein, this was held not to be within the statute.

Demolition not Primary Object of Mob.

So also in *R.* v. *Batt* (1834), 6 C. & P. 329, cited by Littledale, J., *supra*, where a party of coal-whippers, having a feeling of ill-will against a coal-lumper, who paid less than the usual rate of wages, created a mob, and riotously went to the house where he kept his pay-table, and cried out that they would murder him, and began to throw stones, and broke windows and partitions and part of a wall, and continued, after his escape, throwing stones at the house till they were compelled to desist by the threats of the police, it was held that they might be convicted of beginning to demolish under 7 & 8 Geo. 4, c. 30, s. 8, though their principal object was to injure the coal-lumper, provided that it was also their object to demolish the house either on account of its being used by him or his men, and though they had not any ill-will against the owner of the house personally. In *R.* v. *Howell*, *supra*, it was also laid down that if a part of the object of the rioters be to demolish the house, it makes no difference that they also acted with another object, such as to injure a person who had taken refuge there.

In *Beckwith* v. *Wood* (1817), 2 Stark. 263, where the house was attacked by a mob with intent to liberate their leader, or to pull down the house if he was not restored to them, and acts of violence were committed, Lord Ellenborough considered that the offence was complete. The distinction between this case and *R.* v.

Price, *supra*, decided by TINDAL, C.J., appears to be that in the latter the mob desisted from their destruction of the house because they were unable to find the person for the purpose of seizing whom the damage to the house was commenced, and the fact that they left off of their own accord negatived the intention of "demolishing" the house.

LIABILITY OF HUNDRED FOR FELONIOUS DAMAGE.

As has been before stated, the liability of the Hundred for riotous damage did not arise except in cases where such damage was felonious. The cases, therefore, upon the liability of the Hundred are illustrative of the extent to which the damage must go before it becomes felonious damage.

"It is not every breaking of the windows or doors of a house which will make the Hundred answerable. The acts of the mob must indicate a purpose to demolish the house" (*x*).

Two cases upon the subject, *Drake* v. *Footitt*, *Drake* v. *Hankin* (1881), 7 Q. B. D. 201; 45 J. P. 798; 50 L. J. M. C. 141; 45 L. T. (N.S.) 420, arose out of the election riots at Great Marlow, in April, 1880. In one of these (in which Footitt was the respondent) the mob had torn down a lamp fixed into the wall of the respondent's house, had thrown stones at the house, breaking the windows and injuring the masonry and some iron shutters fixed to the windows. In the other case (in which Hankin was the respondent) the mob broke the windows of the shop in which he carried on the business of a tobacconist, and stole about £2 worth

(*x*) *King* v. *Chambers* (1816), 4 Camp. 377, *per* Lord ELLENBOROUGH. See also *Reid* v. *Clarke*, *infra*.

of tobacco from the shop window. About ninety other houses in the town were similarly treated. The damage to the house of each respondent was caused prior to the reading of the proclamation under the Riot Act.

At a special petty sessions under 7 & 8 Geo. 4, c. 31, s. 2, the justices found that the houses in question had been feloniously demolished in part, so as to make the Hundred liable to pay compensation. It was argued for the respondent Hankin, on appeal to the Queen's Bench Division, that the breaking of the window and subsequent larceny of the tobacco amounted to a felonious demolition, apart from the operation of the Riot Act. It was held, however, that there was no evidence of felonious demolition.

LINDLEY, J., in delivering the judgment of the court, after reading s. 2 of 7 & 8 Geo. 4, c. 31, making the Hundred liable where a house is "feloniously demolished, pulled down or destroyed wholly or in part," and referring to ss. 1, 4 and 6 of the Riot Act, said :

"It was decided under the Riot Act that there was no liability on the part of the Hundred to make good damage done to houses unless the houses were feloniously demolished, or destroyed, or commenced to be feloniously demolished under s. 4 (*y*). Then it was decided further that there was no destruction or demolition which amounted to a felony within the Riot Act, unless there was a total destruction, or the beginning of a total destruction, that is to say, unless there was some intent or purpose to destroy the house ; and the cases decided that if the mob attacked the house for the purpose of maliciously injuring it—not destroying it—and with no purpose to destroy, but breaking the windows and smashing the doors, that alone was not only no destruction and not commencement of destruction, but it was not an offence within

(*y*) *Reid* v. *Clarke* (1798), 7 T. R. 496.

the Act at all, unless there was something more to show that they intended to destroy, and if they left the house when they might have destroyed it, but did not, without being prevented by the police or otherwise, the case was held not to come within s. 4 of the Act; that is to say, it was held that there was no felonious attack upon the house. But if, on the other hand, they were proceeding to demolish it, and the evidence would have warranted the inference that they would have demolished it if not prevented, it was a commencement to demolish or destroy. The 7 & 8 Geo. 4, c. 27, repealed both the 4th and 6th sections of the Riot Act. . . . The 7 & 8 Geo. 4, c. 30, by s. 8 re-enacted in substance s. 4 of the Riot Act. . . . Now the construction put upon 7 & 8 Geo. 4, c. 30, s. 8, in all these cases (z) is the same as that put upon s. 4 of the Riot Act, and comes to this, that there is no felony committed under 7 & 8 Geo. 4, c. 30, s. 8, unless there was demolition or destruction, or the commencement of demolition or destruction, the purpose being to effect a complete demolition and destruction if there was no interruption. That being the case, we pass on to the statutes in force at the time when this particular riot took place. Those are 24 & 25 Vict. c. 97, s. 11 (which has replaced in substance 7 & 8 Geo. 4, c. 30, s. 8, and relates to the felonious destruction or demolition of houses), and 24 & 25 Vict. c. 97, s. 12, which relates to malicious damage and injuries to houses, etc. If there is a demolition or destruction, or the commencement of a demolition or destruction, such as is mentioned in s. 11, it is felonious by the Act. If it is short of that—if it is injury or damage, no demolition or destruction, or any intent or purpose to destroy—the offence is a misdemeanor under s. 12, but not a felony under s. 11. . . . In Footitt's case there really was nothing but the injury to the house, and that that was a misdemeanor, in the sense of malicious injury under s. 12, is plain enough. . . . In Hankin's case the conclusion is the same, notwithstanding the felony—notwithstanding that after the place was broken open, there being no intent to destroy the house, some of the mob stole some tobacco, for that does not make the demolition of the house demolition in whole or in part within 7 & 8 Geo. 4, c. 31, s. 2."

INJURY MUST BE TO PART OF FREEHOLD.

The part injured must be some part of the freehold, and the destruction of moveable shop shutters would

(z) Those already cited in the text.

not, therefore, suffice (*R.* v. *Howell* (1839), 3 St. Tr. (N.S.), at p. 1145 ; 9 C. & P. 437 : *per* LITTLEDALE, J.) ; and where stones and brickbats had been thrown against a house during the Corn Law Riots of 1815, and the inside window shutters and window sill and part of the fan-light over the door were broken, but none of the window panes, Lord ELLENBOROUGH held that it was a sufficient part demolition under the statute to support an action against the Hundred, the mob only having stopped because they heard that the Life Guards were coming (*Sampson* v. *Chambers* (1815), 4 Camp. 221). See also *Burrows* v. *Wright* (1801), 1 East, 615.

And in a case which occurred during the Luddite Riots in 1813, the prisoners were tried and convicted under 9 Geo. 3, c. 29 (relating to damage to mills, and similar in its terms to the present statute), for an attack upon Mr. Cartwright's mill, when the actual damage was a destruction of the windows and several of the window frames, which were fixed in the stone work, the breaking of several of the doors, and in two instances breaking off the stone jambs (*R.* v. *Haigh and Others*. Report of trial published at the time).

ASSERTION OF A RIGHT BY RIOTERS.

In *R.* v. *Langford* (1842), 1 C. & M. 602, it was laid down by PATTESON, J., that if persons riotously assemble and demolish a house, really believing that it is the property of one of them, and act *bonâ fide* in the assertion of a supposed right, this will not be a felonious demolition of the house within 7 & 8 Geo. 4, c. 30, s. 8. It is believed that this is the only reported case under the statute in which this principle has been

laid down. The statute 24 & 25 Vict. c. 97 (*a*) omits in s. 11 the word "maliciously," which is inserted in the other sections relating to felonious injuries to property, *e.g.*, ss. 14, 15; and it is to be observed that the offence to which this aggravated punishment is given was an offence at common law, the danger to the public being the same, whether the tumult and violence were under a supposed claim of right or not. It rests, it is presumed, upon the common law principle, that to constitute a felony there must be an evil intention, and the word "feloniously" must be introduced into the indictment to give the offence that character, and to attach the legal consequences to it (*R.* v. *Douglas* (1847), 16 L. J. M. C. 117; *James* v. *Phelps* (1840), 11 A. & E. 483; 1 Hawk. P. C. c. 25). According, therefore, to *R.* v. *Langford*, *supra*, the *bonâ fide* assertion of a right by the persons riotously assembled together, takes the case out of the statute. The word "maliciously," which is contained in other sections of 24 & 25 Vict. c. 97, means that the act must be done "wilfully and without any claim or pretence of right to do it," and the presence of this word implies the existence of a state of mind in the offender in order to constitute the offence; but it is not always the case, when certain acts are made felony, and the indictment charges the doing of those acts "feloniously," that any *felonious* state of mind must exist. There are instances of felonies where a statute has provided that certain acts shall amount to felonies if done by any person, and where no particular state of mind, implying "fraud" or "malice," is at all necessary to accompany the act

(*a*) *Ante*, p. 81.

forbidden by the statute in order to complete the offence. See, as to this case, *R.* v. *Casey* (1874), 8 Ir. C. L. (C. C. R.) 408).

It has been seen (*b*) that in most cases the legality of the object with which persons assemble together is no defence to a charge of riot, should such object be effected by violent means and to the danger of the public peace. It seems, therefore, to be doubtful whether the decision in *R.* v. *Langford*, *supra*, would be now adhered to in this respect.

NUMBER OF PERSONS ENGAGED.

As has been before stated, for a definition of the word "riotously" the common law definition of riot must be resorted to, therefore there must be at least three persons engaged in the demolition of the house. In the case above-mentioned (*R.* v. *Langford*) only *four* men were present at the destruction of the house, and it is believed that no case appears in the books in which a less number of persons were implicated. In *R.* v. *Nelson* (1840), 1 Craw. & D. 465, PENNEFATHER, B., in trying a case under the Irish statute, 23 & 24 Geo. 3, c. 20, in which almost the same words are used, held that a demolition by a few persons was not within the statute, for that it was only aimed at outrages by large bodies of men. In the English statute, 24 & 25 Vict. c. 97, ss. 11 and 12, there seems to be nothing to warrant this qualification; indeed, *R.* v. *Langford*, *supra*, although decided under the earlier statute of 7 & 8 Geo. 4, c. 30, appears to be a direct authority to the contrary.

(*b*) *Ante*, p. 47.

PARTICIPATION IN FELONIOUS RIOTING.

The remarks already made upon joining in a riot will apply here with equal propriety. But it is proposed to repeat the short extract from the charge of TINDAL, C.J. (*c*), upon this subject, and then to quote several cases as illustrative of the principles then laid down :

"In cases of this description you will consider whether the individual charged was one of the persons constituting a riotous assemblage which was effecting the destruction of the building. If he formed part of such riotous assembly at the time the act of demolition commenced, or if he wilfully joined such riotous assembly so as to co-operate with them while the act of demolition was going on, and before it was completed, in either case he comes within the description of the offence, and within the penalties imposed by the Act ; although he may not have been a person who actually assisted with his own hand in the demolition of the building."

This statement of the law is fully supported, both by principle and authority, and *R.* v. *Simpson, Ellis and Others* (1842), C. & M. 669, is a good illustration of its application. The house was destroyed by fire, and it was objected that, as Ellis was shown to have come up after the fire commenced, he would not be guilty as a principal. TINDAL, C.J., however, overruled the objection, as the offence was distinct from arson, and consisted not of the fact of destroying the house by fire, but the combined facts of riotously assembling, and whilst the riot continued demolishing the house. The whole of the prisoner's conduct during the day was before the jury, and it was left to them to say whether he had not incited the mob to destroy the house, and afterwards been present at its destruction.

(*c*) *Ante*, p. 70.

So in *R.* v. *Harris* (1842), C. & M. 661, where, on a charge of feloniously demolishing a house, it appeared that some of the prisoners set fire to the house itself, and that others carried furniture out of the house and burnt it in a fire made on a path outside the house, it was held to be a question for the jury whether the latter persons were not taking part in a general design of destroying the house and furniture, and if so, the jury ought to convict them under the statute.

In *R.* v. *Howell* (1839), 3 St. Tr. (N.S.) 1087; 9 C. & P. 437, on a similar charge in respect of the house of B., it was proved that A. and a mob of persons assembled at H.; A. there addressed the mob in violent language, and led them in a direction towards a police office about a mile from H., some of the mob from time to time leaving and others joining. At the police office the mob broke the windows, and then went to attack B.'s house and set it on fire, A. not being present at the attack on the house or at the fire. It was held that, on this state of facts, A. ought not to be convicted of the demolition, as it did not sufficiently appear what the original design of the mob at H. really was, nor whether any of the mob who were at H. were the persons who demolished B.'s house.

It is quite competent to the prisoner to show that he was compelled to join the mob by force and he may call a witness to show that he said he would run away at the first opportunity (*R.* v. *Crutchley* (1831), 5 C. & P. 133). So also there is no *guilty* participation if the person joins from fear of death or from compulsion (*R.* v. *Gordon* (1746), 1 East, P. C. 71). But an apprehension, though ever so well grounded, of having property wasted or destroyed, or of suffering any other

mischief not endangering the person, will afford no excuse for joining or continuing with rebels (*R.* v. *McGrowther* (1746), 1 East, P. C. 71). As to the liability of those who use inflammatory language from which violence results, the remarks of WILDE, C.J., in a case of *R.* v. *Sharpe* (1848), 3 Cox C. C. 288, where the charge was for riot and using seditious language, may be usefully quoted :

"I think it is not the hand that strikes the blow or that throws the stone that is alone guilty under such circumstances, but that he who inflames people's minds, and induces them by violent means to accomplish an illegal object, is himself a rioter though he takes no part in the riot."

See also the observations of CAVE, J., in *R.* v. *Burns and Others* (1886), 16 Cox C. C. 355, at p. 366 (*d*).

The section of 24 & 25 Vict. c. 97, dealing with principals in the second degree and accessories, is as follows :

Section 56. "In the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable ; and every accessory after the fact to any felony punishable under this Act shall, on conviction, be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour ; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this Act shall be liable to be proceeded against, indicted, and punished as a principal offender."

STATUTE APPLIES THOUGH ACT PART OF A TREASONABLE OUTBREAK.

It seems clear that an indictment will lie under this statute, as upon other statutes creating substantive felonies, although the acts might, if viewed with

(*d*) See also *ante*, p. 18, *et seq.*

reference to other circumstances, amount to the crime of high treason. At the Bristol Special Commission, in 1832, the objection was raised on behalf of one of the prisoners that the evidence went to show that *all* the gaols (*e*) in the kingdom were to be destroyed, and that he thereby was guilty of treason in which the felony was merged. This objection was overruled, and TINDAL, C.J., said that he had yet to learn that if a person who might be charged with high treason had done an act amounting to murder, arson, or other offences which might be made overt acts of that treason, therefore he was to be acquitted on such minor charge, and the Crown driven to prefer an indictment for high treason (*f*).

INDICTMENT.

It has been decided that an indictment under the Riot Act need not aver that the riot was *in terrorem populi* (*R.* v. *James* (1831), 5 C. & P. 153); and by analogy and the application of the general rule that it is sufficient to follow the words of the statute creating the particular offence charged, it would be sufficient in this case to follow the words of s. 11 without alleging as to the word "riotously" the fact of the riot being "*in terrorem populi*." The word "feloniously" would, however, be necessary to describe the offence technically; so also would the word "unlawfully" (*R.* v. *Turner* (1829), 1 Moo. C. C. 239). See also *R.* v. *Casey and Others* (1874), 8 Ir. C. L. (C. C. R.) 408, where an indictment under this statute was set out from which

(*e*) See extract from Report of Criminal Law Commissioners, *ante*, p. 29.

(*f*) See 9 L. Mag. (O.S.) 77, and *cf. R.* v. *O'Donnell* (1848), 7 St. Tr. (N.S.) 637.

the word "feloniously" was omitted, the indictment was held good as charging a common law misdemeanor, while the allegations of demolishing the house could well be treated as circumstances of aggravation of the riot.

The Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), considerably relaxed the strictness of criminal pleading, and gave the courts considerable power of amendment of indictments in matters not material to the merits of the case. The proof as to the place where the offence is alleged in the indictment to have been committed must correspond with such allegation unless the indictment be amended in this respect (*R.* v. *Richards* (1832), 1 M. & R. 177; and see *R.* v. *Howell* (1839), 3 St. Tr. (N.S.), at p. 1112). A precedent of an indictment under s. 11 of 24 & 25 Vict. c. 97, is given in Archbold's Criminal Pleading, 23rd ed., p. 670, and one under the corresponding statute of 7 & 8 Geo. 4, c. 30, *ante*, will be found in *R.* v. *Howell* (1839), 3 St. Tr. (N.S.), at p. 1087.

The general nature of the evidence requisite will appear from the cases quoted upon what amounts to a guilty participation in the offence, and the other matters dealt with in this chapter.

RIOTS AND SIMILAR OFFENCES UNDER SPECIAL STATUTES.

A special statute (33 Geo. 3, c. 67) was passed in 1793 to suppress riotous proceedings by seamen and others connected with shipping, and enacts in s. 1—

That if any seamen, keelmen, casters, ship carpenters, or other persons (*g*), riotously assembled together to the number

(*g*) The words "other persons" imply others *ejusdem generis* with those particularised. See *Sandiman* v. *Breach* (1827), 7 B. & C. 96.

of three or more, shall unlawfully and with force prevent, hinder or obstruct the loading or unloading or the sailing or navigating of any ship, keel or other vessel, or shall unlawfully and with force board any ship keel, or other vessel with intent to prevent, hinder or obstruct the loading or unloading or the sailing or navigating of such ship, keel or other vessel, every such person shall on conviction at any court of general or quarter sessions for the county, etc., where the offence is committed, or in any court of oyer and terminer, be liable to imprisonment for a period not exceeding twelve months, and not less than six months, with or without hard labour.

The statute contains further provisions as to acts done in the service or by the authority of the Crown, as to offences on the high seas, and provides a limitation of twelve months from the commission of the offence, after which time no prosecution shall be commenced. For a second or subsequent offence after a previous conviction under the statute the offender is guilty of felony, and liable upon conviction to a maximum punishment of fourteen years' penal servitude.

As dealing with a somewhat similar offence may be mentioned the statutes 11 Geo. 2, c. 22 (1738), and 36 Geo. 3, c. 9 (1795), providing against violence or threats for the purpose of hindering exportation of corn and damaging granaries or grain ships. See *Molony* v. *Power* (1847), 10 Ir. L. R. 538, under a similar statute of Ireland.

The Consolidating Statute of 1861 (24 & 25 Vict. c. 100), ss. 39 and 40, relates to assaults with intent to obstruct the sale or free passage of grain, and assaults on seamen and others working at their lawful business. See also the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), *post*.

PLUNDERING WRECKED SHIPS.

By s. 515 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), it is enacted that—

Where a vessel is wrecked, stranded, or in distress as aforesaid [*i.e.*, at any place on or near the coasts of the United Kingdom or any tidal water within the limits of the United Kingdom], and the vessel or any part of the cargo and apparel thereof, is plundered, damaged, or destroyed by any persons riotously and tumultuously assembled together, whether on shore or afloat, compensation shall be made to the owner of the vessel, cargo, or apparel :

In England in the same manner, by the same authority, and out of the same rate as if the plundering, damage, injury, or destruction were an injury, stealing, or destruction in respect of which compensation is payable under the provisions of the Riot (Damages) Act, 1886 (*h*), and in the case of the vessel, cargo, or apparel not being in any police district, as if the plundering, damage, injury, or destruction took place in the nearest police district ;

In Scotland the Riot Act (1 Geo. 1, st. 2, c. 5), and in Ireland the statute 16 & 17 Vict. c. 38, are to apply.

Section 514 of the same Act gives power to the receiver of wrecks to suppress plunder, or disorder, or obstruction by force, and by calling on individuals to assist him, and indemnifies the person so assisting in case of any death or injury inflicted when acting under the orders of the receiver. For assaults on magistrates, officers, or other persons acting in such cases, see 24 & 25 Vict. c. 100, s. 37.

ROBBERY BY TWO OR MORE.

The Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 43, deals with robberies and assaults with intent to rob

(*h*) See the statute and regulations, *post*.

by two or more persons, and imposes as a maximum punishment penal servitude for life.

OBSTRUCTING CLERGYMEN.

It is a misdemeanor under the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 36, to obstruct or assault any clergyman in the discharge of his duties.

DISTURBING CONGREGATIONS.

The statutes dealing with this subject are 1 Mary, sess. 2, c. 3; 1 Eliz. c. 2; 1 Will. & Mary, c. 18; 52 Geo. 3, c. 155, s. 5; 9 & 10 Vict. c. 59, s. 4; 23 & 24 Vict. c. 32; and the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), s. 7, renders riotous or indecent behaviour at burials a misdemeanor.

OFFENCES AGAINST THE GAME LAWS.

The statute 9 Geo. 4, c. 69, s. 9, makes it a misdemeanor for three or more persons by night, and armed, to unlawfully enter or be upon land for the purpose of taking or destroying game:

"The mischief against which the Act appears to be directed is the danger to the public peace produced by the assemblage in the night of armed numbers" (*i*).

The prosecution must be commenced within twelve months from the commission of the offence (*k*).

(*i*) *Fletcher* v. *Calthrop* (1845), 6 Q. B. 880.

(*k*) Section 4. See *R.* v. *Cashbolt* (1869), 11 Cox C. C. 385; *R.* v. *Austin* (1845), 1 C. & K. 621; *R.* v. *Hull* (1860), 2 F. & F. 16; *R.* v. *Brooks* (1847), 2 Cox C. C. 436; Den. C. C. 217; *R.* v. *Parker* (1864), 9 Cox C. C. 475; L. & C. 459; 33 L. J. M. C. 135; 10 L. T. (N.S.) 765; 12 W. R. 765, and see also the cases noted, *post*, at the end of Part II.

In *R.* v. *Brodribb* (1816), 6 C. & P. 571, it was stated by HOLROYD, J., that the offence of unlawful assembly was committed by sixteen persons who met in a private house for the purpose of committing the offence under s. 9 of this statute. There is a similar provision in 1 & 2 Will. 4, c. 32, s. 32, as to offences by five or more persons committed in the daytime.

OFFENCES AGAINST SPIRITS ACT, 1880.

A person is liable to a fine of £500 if he forcibly opposes the execution of the Spirits Act, 1880, or, being armed, rescues any offender against the statute (43 & 44 Vict. c. 24, s. 150).

RESCUE OF FELONS.

The statutes relating to this offence are 25 Geo. 2, c. 37; 1 & 2 Geo. 4, c. 88; and 7 Will. 4 & 1 Vict. c. 91.

POUND BREACH.

Persons releasing or attempting to release impounded cattle are liable to be summarily dealt with under 6 & 7 Vict. c. 30.

RESCUING GOODS.

It is a summary offence under s. 48 of 51 & 52 Vict. c. 43 (The County Courts Act, 1888), to assault bailiffs or rescue goods levied under process of a county court.

RESISTING SHERIFF.

By the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 8, if a sheriff finds any resistance in the execution of a writ, he shall take with him the power of the

county, (*l*) and shall go in proper person to do execution, and may arrest the resisters and commit them to prison, and every such resister shall be guilty of a misdemeanor (*Cf. R.* v. *Roberts* (1849), 4 Cox. C. C. 145).

PRECAUTIONS DURING RIOTS.

In certain cases the legislature has enacted that during the continuance of a riot precautionary measures prescribed by statute are to be taken.

Theatres.

As to theatres, 6 & 7 Vict. c. 68, s. 9, gives powers to justices to make "suitable rules for insuring order and decency" in theatres, and enacts—

". . . in case any riot or breach of the said rules in any such theatre shall be proved on oath before any two justices usually acting in the jurisdiction where such theatre is situated, it shall be lawful for them to order that the same be closed for such time as to the said justices shall seem fit; and while such order shall be in force the theatre so ordered to be closed shall be deemed to be an unlicensed house" (*m*).

Public Houses.

In respect to houses licensed under the Intoxicating Liquor Acts, it is provided by the Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 23, that—

Any two justices of the peace acting for any county or place where any riot or tumult happens or is expected to happen

(*l*) See, as to the *posse comitatus*, Dalton, Ch. 95, 2 Inst. 194. The term includes men between the ages of 15 and 70, whom the sheriff chooses to call upon. See *R.* v. *Pinney* (1832), 3 St. Tr. (N.S.) 11; 5 C. & P. 276.

(*m*) Section 8 of the same statute applies to theatres licensed by the Lord Chamberlain, who is by that section given similar powers to those contained in s. 9. See the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 7.

may order every licensed person in or near the place where such riot or tumult happens or is expected to happen to close his premises during any time which the justices may order, under a penalty of £50. And it shall be lawful for any person acting by order of any justices to use such force as may be necessary for the purpose of closing such premises (*u*).

ELECTION RIOTS.

As to adjournment of the poll at parliamentary elections, in case of riot, see 2 & 3 Will. 4, c. 45, s. 70; 5 & 6 Will. 4, c. 36, s. 8; 16 & 17 Vict. c. 15, s. 3; 35 & 36 Vict. c. 33, ss. 10, 15, 17.

CALLING OUT YEOMANRY RESERVE FORCE.

The statute 44 Geo. 3, c. 54, ss. 23, 24 relates to voluntary assembly and calling out of the yeomanry on invasion or rebellion, and for suppression of riots. See also the Militia and Yeomanry Act, 1901 (1 Edw. 7, c. 14). The statutes 44 & 45 Vict. c. 58, and 45 & 46 Vict. c. 48, contain similar provisions as to the reserve forces, and 52 Geo. 3, c. 38, and 1 Geo. 4, c. 100, as to the local and London Militia respectively.

(*u*) As to a conviction under this section, see *Newman* v. *Earl of Hardwicke* (1838), 8 A. & E. 124, and Summary Jurisdiction Act, 1879, s. 39 (1).

PART II.

THE RIOT ACT, 1 GEO. 1, ST. 2, C. 5.

Origin.

Both in the reigns of Edward VI. and Queen Mary temporary statutes were passed, aimed at riots of an aggravated nature, such as those set on foot to "offer violence to the council," or "change the laws of the kingdom." But when the House of Hanover was still trembling upon its recently-acquired throne (*o*), the frequent popular tumults led to the severe enactments familiarly known as "The Riot Act"; and, with the exception of the repeal, as far as England is concerned, of ss. 4 and 6, relating to the demolishing of churches and houses, and the recovering of damages for the same from the Hundred; and the substitution of a milder punishment for that of death, it has remained practically unaltered to the present day. Severe as it is, it has been many times productive of most beneficial consequences. The timely warning given by it brings many to a sense of their danger, and as far as possible ensures the speedy vindication of the law, or at least the separation of the innocent from the guilty.

"The statute," it has been observed (*p*), "it is obvious in an indirect kind of way, established a kind of modified martial law

(*o*) Erskine, in his defence of Mr. Kennett (1781), 5 C. & P. 290, states that the statute "was made to prevent the disorders that might be occasioned by those who were enemies to that accession."

(*p*) Finlason's Review of the Authorities as to the Repression of Riot and Rebellion (1868), p. 35.

against mere rioters, after a kind of proclamation of war against them. It is a step *in terrorem* and of gentleness; the reading of the proclamation operates as a notice" (*q*).

The importance of its provisions may be estimated by the fact that formerly it was directed to be read at every quarter sessions and at every leet or law-day, so that knowledge of its provisions might be universally spread. This practice, however, appears to have now fallen into disuse.

WHEN THE PROCLAMATION IS TO BE MADE.

The first section of the statute is as follows:

"Whereas of late many rebellious riots and tumults have been in divers parts of this kingdom, to the disturbance of the public peace and the endangering of his Majesty's person and government, and the same are yet continued and fomented by persons disaffected to his Majesty, presuming so to do, for that the punishments provided by the laws now in being are not adequate to such heinous offences; and by such rioters his Majesty and his administration have been most maliciously and falsely traduced, with an intent to raise divisions, and to alienate the affections of the people from his Majesty: therefore, for the preventing and suppressing of such riots and tumults, and for the more speedy and effectual punishing the offenders therein, be it enacted . . . that if any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, at any time after the last day of July in the year of our Lord one thousand seven hundred and fifteen, and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff or bailiffs, or other head officer, or justice of the peace of any city or town corporate, where such assembly shall be, by proclamation to be made in the King's name, in the form hereinafter directed, to disperse themselves, and peaceably to depart to their habitations or to their lawful business, shall to the number of twelve or more (notwithstanding such proclamation made) unlawfully, riotously, and tumultuously remain or continue together by the

(*q*) *Per* Lord MANSFIELD, in *R.* v. *Kennett* (1781), 5 C. & P. 295.

space of one hour after such command or request made by proclamation, that then such continuing together to the number of twelve or more, after such command or request made by proclamation, shall be adjudged felony . . ." (*r*).

There must, therefore, be twelve or more persons riotously and tumultuously assembled together, to the disturbance of the public peace. Under these conditions the discretion is given to the magistrates or other civil authorities. What has been previously said upon riots will apply here, provided twelve instead of three be present.

There is, indeed, a decision of Patteson, J., cited in the text books, as an authority for the following proposition :

"That if there be such an assembly that there would have been a riot if the parties had carried their purpose into effect, it is within the Act" (1 Russell, Cr. & M. 573, citing *Rex* v. *Woolcock* (1833), 5 C. & P. 516).

If this is to be taken in the natural sense of the words, it implies that the Riot Act might be read *before* a riot existed. Had that very learned and careful judge really decided this, it would even then be a matter of grave doubt and inquiry whether such a power could have been given to the justices, and whether the Act did not necessarily imply a riot in fact, and not merely an intended riot. But it is submitted that the case, when examined, does not bear this construction, and that his lordship's own words, as reported, show that it was not his meaning. The indictment was for remaining together one hour after proclamation made. The facts stated are, that on October 1st, 1832, when Mr. Phillips was sworn in

(*r*) For punishment that may now be awarded, see *post*.

mayor of Carmarthen, there was a large assemblage of persons in front of the Six Bells inn in that town, at which Mr. Phillips was dining, and *that some stones were thrown*. The reading of the Riot Act was proved, and that the prisoners remained the requisite time. Mr. Thomas, for one of the prisoners, objected there was no riot, and that it was at most an unlawful assembly, and cited the case of *Rex* v. *Birt* (1831), 5 C. & P. 154.

The report goes on thus :

"PATTESON, J.—I am of opinion that, if there was such an assembly that there would have been a riot if the parties had carried their purpose into effect, it would be within the Act ; and whether there was a cessation or not is a question for the jury."

Applying this to the facts, it is surely clear that the question for the jury was whether the riot which had commenced was continuing or not when the Act was read, and during the period that followed? If the first part of the ruling was to be taken in the sense above objected to, it would have sufficed to have proved merely the continuing *purpose*. Under the circumstances, it was open to doubt whether any joint purpose had continued or was being carried into execution after the first few stones had been thrown. The jury, probably upon this ground, found the prisoners not guilty.

The whole scope and language of the Act, and the principles of construing penal statutes, seem to require that a riot must exist before the Act can be legally read, and especially when the provisions of the fifth section are taken into consideration. The decision in *R.* v. *Langford*, already referred to (*s*), that a demo-

(*s*) *Ante*, p. 93.

lition must be in the course of a common law riot, the statute using the word riotously, supports this view.

It is also noticeable that Blackstone, in his Abstract of this statute, wholly omits the words "riotously and tumultuously," so that according to the commentaries a mere unlawful assembly might be made amenable to the severe penalties of the statute. From an examination of the first and fifth sections it appears to be correct to say that the mere unlawfulness of the assembly would not, in the absence of riotous acts, justify the reading of the proclamation. There must be twelve persons at the least assembled together under three co-existing conditions expressed by the words "unlawfully, riotously, and tumultuously," in order to satisfy the requirements of the first section, and the distinction between an unlawful assembly and a riotous assembly is a material one.

How Proclamation is to be made.

This is directed in express terms by the second section, and the formalities must be strictly observed. That section enacts as follows:

"The order and form of the proclamations that shall be made by the authority of this Act shall be as hereafter followeth, (that is to say) the justice of the peace, or other person authorised by this Act to make the said proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice command or cause to be commanded silence to be while proclamation is making, and after that, shall openly and with loud voice make or cause to be made proclamation in these words or like in effect:

'Our Sovereign Lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act

made in the first year of King George, for preventing tumults and riotous assemblies. GOD save the King.'
And every such justice and justices of the peace, sheriff, under-sheriff, mayor, bailiff, and other head officer aforesaid, within the limits of their respective jurisdictions, are hereby authorised, empowered, and required, on notice or knowledge of any such unlawful, riotous, and tumultuous assembly, to resort to the place where such unlawful, riotous, and tumultuous assembly shall be, of persons to the number of twelve or more, and there to make or cause to be made proclamation in manner aforesaid."

The exact form of the proclamation must be used, only substituting, if necessary, "the Queen" for "the King"; although the statute says words "like in effect." So when the magistrate in reading it omitted the words "God save the King," it was held that persons remaining together above an hour afterwards could not be capitally convicted (*R.* v. *Child* (1830), 4 C. & P. 442) (*t*).

OBSTRUCTION OF PERSONS MAKING PROCLAMATION.

The fifth section enacts:

"Provided always, . . . that if any person or persons do or shall, with force and arms, wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly lett, hinder, or hurt any person or persons that shall begin to proclaim or go to proclaim according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting, hindering, or hurting such person or persons so beginning or going to make such proclamation as aforesaid shall be adjudged felony (*u*) . . . and that also every such person and persons so being unlawfully, riotously, and tumultuously assembled, to the number of twelve, as aforesaid, or more, to whom proclamation should or ought to have been made if the same had not been hindered as aforesaid shall likewise in case they or any of them, to the

(*t*) See also *R.* v. *Biers* (1834), 1 A. & E. 327; *Beck* v. *Beverley* (1843), 11 M. & W. 845: *Nixon* v. *Nanney* (1841), 1 Q. B. 747.
(*u*) See punishment, *post*.

number of twelve or more, shall continue together, and not disperse themselves within one hour after such lett or hindrance so made, having knowledge of such lett or hindrance so made, shall be adjudged felons . . ." (*x*).

This should be a warning to all engaged in riotous assemblies. To oppose, obstruct, hinder, or even *hurt* those engaged in making the proclamation, is as serious an offence as the remaining the hour after it is read, and those who, with knowledge of such hindrances having been caused, continue riotously assembled, will be guilty of felony, even if the proclamation has not in fact been read.

Computation of the Hour.

If the proclamation be read more than once, the hour is to be computed from the first reading (*y*). It need not be proved affirmatively that the prisoner was among the mob during the whole hour. If it be shown that he was there from time to time during the period, the question is to be left to the jury, whether, under all the circumstances, he did not substantially continue making part of the assembly ; "for, although he might have had occasion to separate himself for a minute or two, yet if in substance he was there during the hour, he would not thereby be excused" (*z*).

Riotous Conduct within the Hour.

The statute is only cumulative, and the common law offence remains, so that all the rights and powers possessed by the civil magistrates or private persons

(*x*) See punishment, *post*.
(*y*) *R.* v. *Woolcock* (1833), 5 C. & P. 516.
(*z*) *R.* v. *James* (1831), *per* Patteson, J., 1 Russ. Cr. & M., 6th ed., 574.

for the suppression of crime are in full force. Lord LOUGHBOROUGH, in his charge at the trial of the rioters of 1780, stated that many persons had fallen into the mistake of supposing that, until the expiration of the hour, they were to remain passive, and the mob were to have their sway. PARKE, J., in his charge to the grand jury at the opening of the special commission at Salisbury for the trial of incendiaries and machine breakers in the year 1831, referred also to this mistake :

"Many persons," he said, "have fallen into the error of supposing that, because the law allows one hour for the dispersion of a mob to whom the proclamation has been read by the magistrate, during that period the civil power and the magistrates are disarmed and the King's subjects are bound to remain quiet and passive. The language of the Act does not warrant any such construction nor could such have been the intention of the legislature" (2 St. Tr. (N.S.), at p. 1029).

So, too, in *R.* v. *Fursey* (1833), 3 St. Tr. (N.S.), at p. 565, GASELEE, J., says :

"Now a riot is not the less a riot . . . because the proclamation of the Riot Act has not been read. . . . But if that proclamation be not read, the common law offence remains . . . and all magistrates and constables and private individuals are justified in dispersing the offenders, and, if they cannot otherwise succeed in doing so, they may use force" (*a*).

This misapprehension probably arose from the third section of the Riot Act, which gave affirmatively much the same powers which already existed at common law, in the following terms :

"If such persons so unlawfully, riotously, and tumultuously assembled, or twelve or more of them, after proclamation made

(*a*) See also TINDAL, C.J., in *The Bristol Riots* (1832), 3 St. Tr. (N.S.) 1, *post*, and BLACKBURNE, C.J., in *The Limerick Special Commission* (1848), 6 St. Tr. (N.S.) 1113, and *The Featherstone Report*, *post*.

in manner aforesaid, shall continue together, and not disperse themselves within one hour, that then it shall and may be lawful to and for every justice of the peace, sheriff or under-sheriff of the county where such assembly shall be, and also to and for every high or petty constable, and other peace officer within such county, and also to and for every mayor, justice of the peace, sheriff, bailiff, and other head officer, high or petty constable, and other peace officer of any city or town corporate where such assembly shall be, and to and for such other person and persons as shall be commanded to be assisting unto any such justice of the peace, sheriff or under-sheriff, mayor, bailiff, or other head officer aforesaid (who are hereby authorised and empowered to command all his Majesty's subjects of age and ability to be assisting to them therein) to seize and apprehend, and they are hereby required to seize and apprehend such persons so unlawfully, riotously, and tumultuously continuing together after proclamation made as aforesaid, and forthwith to carry the persons so apprehended before one or more of his Majesty's justices of the peace of the county or place where such person shall be so apprehended, in order to their being proceeded against for such their offences according to law; and that if the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting the persons so dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, that then every such justice of the peace, sheriff, under-sheriff, mayor, bailiff, head officer, high or petty constable, or other peace officer, and all and singular persons, being aiding and assisting to them, or any of them, shall be free, discharged, and indemnified, as well against the King's Majesty, his heirs and successors, as against all and every other person and persons of, for, or concerning the killing, maiming, or hurting of any such person or persons, so unlawfully, riotously, and tumultuously assembled, that shall happen to be so killed, maimed, or hurt as aforesaid."

This section had, indeed, an additional object; for by it all parties who might be guilty of excusable homicide would have been free from any danger of forfeiture of their goods or chattels, or the expenses of suing out a writ of restitution, which, prior to 9 Geo. 4, c. 31, was still the law in theory, though in practice the judges

frequently directed a verdict of general acquittal to avoid the forfeiture.

INDICTMENT.

The indictment is sufficient if it follows the words of the statute, without averring that the riot was *in terrorem populi* (*Rex* v. *James* (1831), 5 C. & P. 153); for, whatever the statute meant by the term "riotously and tumultuously," the indictment will mean. But it must state that they *feloniously* remained after the proclamation made. Where the proclamation was read from a book which contained after the words "first year" the words "of the reign of," and the first count of the indictment omitted the words "of the reign of," PATTESON, J., held that the variance between the proclamation as read and as described in that count was fatal to it (*b*). There may be principals in the second degree, and they are punishable as principals in the first degree (*Rex* v. *Royce* (1767), 4 Burr. 2073), and accessories, who would be punishable under 24 & 25 Vict. c. 94, ss. 1, 4 (*c*).

The Act extends to Scotland (s. 9).

LIABILITY OF HUNDRED.

In a case that occurred in 1824 it was objected to the jury panel that it was summoned by the sheriff,

(*b*) *R.* v. *Woolcock* (1833), 5 C. & P. 516. Such an error, if the evidence showed that the proclamation had been duly made, could probably now be amended by virtue of the provisions of s. 1 of 14 & 15 Vict. c. 100.

(*c*) 1 Russ. on Crimes, 6th ed., 573; 3rd ed., 276. See the statute 24 & 25 Vict. c. 94, ss. 1 and 4 in 1 Russ. on Crimes, 6th ed., pp. 180 and 182 respectively. Section 4 deals with accessories after the fact.

who was an inhabitant of the Hundred in which the arson took place, and that as it had been committed by a riotous assemblage, the Hundred would be liable, and the sheriff, therefore, in the technical phrase, not indifferent (*Rex* v. *Savage* (1824), 1 Moo. C. C. 51). This objection could not now be taken, having regard to the provisions of 49 & 50 Vict. c. 38, the Riot (Damages) Act, 1886, *post*.

LIMITATION TO INDICTMENT.

By s. 8, all prosecutions for any offences must be commenced within twelve months after the offence committed *(d)*.

NOT TRIABLE AT SESSIONS.

By 5 & 6 Vict. c. 38, it is enacted that the offences under this Act shall not be tried at any quarter sessions.

PUNISHMENT.

By 7 Will. 4 & 1 Vict. c. 91 (reciting ss. 1, 5 of the Riot Act), the punishment of death was abolished

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(d) See the cases quoted, *ante*, p. 103, as to what is the commencement of a prosecution. As to the computation of time, see 43 & 44 Vict. c. 9. By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3, "month" means "calendar month." In computing the period of limitation the day upon which the offence was committed should be excluded: *Higgins* v. *Macadam* (1829), 3 Y. & J. 1; *Pellew* v. *East Wanford* (1829), 9 B. & C. 134; *Williams* v. *Burgess* (1840), 12 A. & E. 635; *Radcliffe* v. *Bartholomew* (1892), 1 Q. B. 161; 61 L. J. M. C. 63. See also *Migotti* v. *Colville* (1879), 48 L. J. C. P. 695; 15 Cox C. C. 305; 43 J. P. 620; 4 C. P. D. 233; 40 L. T. 622; *Henderson* v. *Preston* (1888), 21 Q. B. D. 362; 16 Cox C. C. 145; *Frew* v. *Morris* (1897), 24 Rettie (4th ser.), p. 50.

and was altered to transportation for life. Penal servitude is now substituted for transportation, and the minimum term that may be awarded is three years. Imprisonment, with or without hard labour, may be awarded for any term not exceeding two years (*e*).

(*e*) See 20 & 21 Vict. c. 3, s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69); Statute Law Revision Acts, 1892 and 1893.

PART III.

RIGHTS AND DUTIES IN RESPECT OF THE SUPPRESSION OF RIOTS AND UNLAWFUL ASSEMBLIES.

It will be found more convenient to deal with the subject-matter of this Part under separate heads—Duties appertaining to Private Persons—Police and Special Constables—The Military—The Magistracy.

DUTIES OF PRIVATE PERSONS.

Although, happily, the ignorance which Erskine (*a*) ventured in some degree to urge as an excuse for Mr. Kennett's conduct in the Gordon Riots of 1780 no longer exists to the same extent, yet since that period the Bristol Riots, and, indeed, almost all other public outrages, have from time to time shown that the well-disposed part of the community hang back from the performance of their duties to preserve the public peace, doubtlessly in many cases from not possessing a clear notion of the duties imposed upon them, and of the rights and privileges given them under such circumstances by the law. In the salient points the law is clear and well defined, and in accordance with strict principles of justice. Where it imposes duties it also gives protection to those it calls upon to perform them.

"In the riots of 1780, just referred to, this matter was much misunderstood, and a general persuasion prevailed that no

(*a*) *R.* v. *Kennett* (1781), 5 C. & P. 295.

indifferent person could interfere without the authority of the magistrate, in consequence of which much mischief was done which might otherwise have been prevented" (*b*).

The law upon this point is laid down in 1 Hawk. P. C., c. 65, s. 11, to the effect that—

"It is certain that any private person may lawfully endeavour to appease all such disturbances by staying those whom he shall see engaged therein from executing their purpose, and also by stopping others whom he shall see coming to join them; for if private persons may do thus much, as it is most certain that they may, towards the suppression of a common affray, surely *a fortiori* they may do it towards the suppression of a riot. Also it hath been holden that private persons may arm (*c*) themselves in order to suppress a riot, from whence it seems clearly to follow that they may also make use of arms in the suppressing of it, if there be a necessity for their so doing. However, it seems to be extremely hazardous for private persons to proceed to those extremities, and it seems in no way safe for them to go so far in common cases, lest, under the pretence of keeping the peace, they cause a more enormous breach of it; and therefore such violent methods seem only proper against such riots as savour of rebellion for the suppressing whereof no remedies can be too sharp or too severe" (*d*).

(*b*) *Per* HEATH, J., in *Handcock* v. *Baker* (1800), 2 B. & P. 264, and *cf.* also Lord LOUGHBOROUGH'S charge on the special commission for the trial of rioters (1780), 21 St. Tr., at p. 493, and BLACKBURNE, C.J., in *The Limerick Special Commission* (1848), 6 St. Tr. (N.S.) 1108.

(*c*) See an opinion to this effect of Wallace, A.-G., and MANSFIELD, in 1780, quoted in 1 St. Tr. (N.S.), p. 1391; but see extract from TINDAL'S, C.J., charge, *post*. It was contended for the defence in *Redford* v. *Birley*, at the trial, to the same effect: (1822) 1 St. Tr. (N.S.) p. 1138; and *R.* v. *Hunt* and *Burdett* v. *Abbott*, *supra*, were cited in support of this contention. In *R.* v. *Pinney* (1832), 3 St. Tr. (N.S.), at p. 522, LITTLEDALE, J., held that magistrates might supply firearms to suppress a riot, though such a course would not be, in general, prudent.

(*d*) The Draft Code of 1879 thus expresses the position of private persons acting in the suppression of "riot." Section 49: Every one is justified in using force necessary to suppress riot, provided the force used is not disproportionate to the danger to be apprehended from the continuance of the "riot."

Duties of Private Persons as to Arrest.

So, private persons are justified, if a felony has been committed, in doing what they can and what the occasion demands to apprehend the felon, and so also to prevent a felony where there can be no reasonable doubt but that for interference one will be committed; and as one illustration out of many that might be given, it was held in *Handcock* v. *Baker* (1800), 2 B. & P. 234, that the defendant was justified in breaking into a house to prevent the plaintiff committing murder (*e*); so also upon fresh pursuit a man may be arrested without warrant when found committing a felony, or detected in the attempt to commit a felony, or engaged in a breach of the peace, though he has given over his intention to commit the felony or breach of the peace (*R.* v. *Howarth* (1828), 1 Moo. C. C. 207; 1 East. P. C. c. 5, s. 72; *R.* v. *Hunt* (1825), 1 Moo. C. C. 93; *R.* v. *Walker* (1854), Dears. 358; *R.* v. *Marsden* (1868), L. R. 1 C. C. R. 131; 37 L. J. M. C. 80). Before a person interferes to prevent others fighting, however, he should first notify that his intention is to prevent a breach of the peace (*R.* v. *Ricketts* (1811), 3 Camp. 68).

If a felony has, in fact, been committed, a private person may arrest the offender, if there be reasonable ground to suspect him guilty, without having witnessed the offence.

The following observations of Blackburn, J., in *Allen* v. *London and South Western Rail. Co.* (1870),

(*e*) See 2 Hawk. P. C., c. 12, s. 19; *R.* v. *Hunt* (1825), 1 Moo. C. C. 93.

40 L. J. Q. B., at p. 56 ; 11 Cox C. C. 625, may be usefully quoted here :

"The general law of this country . . . justifies a private person in giving another person into custody for having committed a felony, provided there has been a felony actually committed, and such private person has reasonable ground to believe that the person whom he has given into custody has committed that felony. The reason for his having such power is because, when a felony has been committed, there is reasonable ground for belief that, in many cases, the accused person would escape unless a private person, who has reasonable grounds for suspecting him, were authorised to seize and take him into custody. But that power ought not to be exercised except where there is reason to believe that the man would not be forthcoming." See also *R.* v. *Turberfield* (1864), 10 Cox C. C. 1.

But, by the common law, neither a private person nor a constable is justified in arresting any of the King's subjects, unless there be a breach of the peace continuing, or unless he has reasonable grounds for believing that a breach of the peace which has been committed will be renewed (*Timothy* v. *Simpson* (1835), 1 C. M. & R. 757 : recognised and approved in *Price* v. *Seeley* (1843), 10 Cl. & F. 28 H. L. R. ; and *R.* v. *Walker* (1854), 23 L. J. M. C. 123 ; Dears. 358 ; 6 Cox C. C. 371). In *Price* v. *Seeley*, the defendant was held to be justified in causing the plaintiff to be arrested under the following circumstances : the plaintiff entered a yard where the defendants were building a wall, he made a disturbance, threw over one of the defendants' servants and was then removed from the yard. Whilst being removed he assaulted one of the defendants. The plaintiff returned again to the yard, made a great noise and disturbance and threatened to assault the defendants. He was then given into custody by the defendants.

And again, where an affray or breach of the peace has begun, any bystander may and ought to interfere not only to part those who are making the affray but also to prevent others from joining in it, and upon reasonable ground of suspicion that the affray recently committed in his view is about to be renewed, he may arrest and detain the intending affrayers (*R.* v. *Light* (1857), Dears. & B. 332 ; 27 L. J. M. C. 1 ; *Webster* v. *Watts* (1847), 11 Q. B. 311 ; 17 L. J. Q. B. 63).

"It is clear," said Parke, B., in *Timothy* v. *Simpson*, *supra*, "that any person present may arrest the affrayer at the moment of the affray, and detain him till his passion has cooled and his desire to break the peace has ceased, and then deliver him to a peace officer. And if that be so, what reason can there be why he may not arrest an affrayer after the actual violence is over, but whilst he shows a disposition to renew it by persisting in remaining on the spot where he has committed it? Both cases fall within the same principle, which is, that for the sake of the preservation of the peace, any individual who sees it broken may restrain the liberty of him whom he sees breaking it, so long as his conduct shows that the public peace is likely to be endangered by his acts. In truth, whilst those are assembled together who have committed acts of violence, and the danger of their renewal continues, the affray itself may be said to continue ; and during the affray the constable may, not merely on his own view, but upon the information and complaint of another, arrest the offender, and of course the person so complaining is justified in giving the charge to the constable."

But a private person may not, after a mere breach of the peace is over and no reasonable suspicion existing of a renewal, apprehend an offender without warrant ; for the object for which the power of interfering by arrest is given in such a case, namely, the preservation of the peace, has been already accomplished (2 Hawk. P. C. c. 12, s. 20 ; 3 Inst. 158 ; *R.* v. *Walker*, *ubi supra* ; *R.* v. *Dyson* (1816), 1 Stark. 246 ; *Baynes* v. *Brewster* (1841), 2 Q. B. 375 ; 1 G. & D. 669), for neither a

constable nor a private person would, in strict law, be justified in arresting merely because a breach of the peace had taken place.

On the other hand, it would not justify an arrest that the party arrested was in the house of another and refused to go out, and was ready and desirous to commit a breach of the peace. In such case the owner might turn him out, forcibly if necessary, but not give him into custody (*Wheeler* v. *Whiting* (1840), 9 Car. & P. 262) (*f*).

An instance of the power of arrest may be given from the disturbances of February 8th, 1886, to which the case of *R.* v. *Burns and Others* (1886), 16 Cox C. C. 356, was the sequel. Any person who had caught one of the mob upon that occasion in the act of breaking windows in St. James's Street, would have been justified in apprehending him and using any necessary force to prevent his escape; but if an hour after he had seen him do it, he had recognised him walking down the street, he would not have been justified in seizing or attempting to seize him and giving him in charge, not at common law, for the breach of the peace was over, nor under the Malicious Injuries to Property Act, 1861, nor the Metropolitan or City Police Acts, 1847, because he was not "found committing" the offence at the time of apprehension (*Simmons* v. *Millingen* (1846), 2 C. B. 524).

In cases, therefore, where the outrages are felonious, either by reason of the operation of the Riot Act or of

(*f*) The following cases may also be referred to upon this subject: *Grant* v. *Moser* (1843), 5 M. & G. 123; *Ingle* v. *Bell* (1836), 1 M. & W. 516; *Cohen* v. *Huskisson* (1837), 2 M. & W. 477; *Howell* v. *Jackson* (1834), 6 C. & P. 723; *R.* v. *Smith* (1833), 6 C. & P. 136; *R.* v. *Hems* (1836), 7 C. & P. 312; *Shaw* v. *Chairitie* (1850), 3 C. & K. 21.

the felonious demolition of property under 24 & 25 Vict. c. 97, s. 11, the common law powers given to private individuals for the arrest of offenders and prevention of the perpetration of the outrage will apply in their full extent.

As we have seen from the passage cited from Hawkins, arms may be used in cases where the riots "savour of rebellion" or are of a serious character. But it must always be remembered that the right in private persons of interference does not justify unnecessary violence or any malicious conduct, for the law always supposes that its servants will exercise due discretion, and act from right motives. See *Roberts* v. *Orchard* (1863), 2 H. & C. 769; 33 L. J. Ex. 65. Some distinctions are also plainly marked out between interferences in case of misdemeanors, in which category is the offence of riot and kindred offences, unless by reason of the statutes above-cited it has acquired the character of felony, and interference in cases of felony.

Where Proclamation under Riot Act has been made.

For the purpose of showing how mistaken the view is that for the hour after the proclamation under the Riot Act is read no one could interfere, the observations of Lord Loughborough, in his charge to the grand jury on the Special Commission for the trial of the Gordon rioters in 1780, reported in 21 How. St. Tr. 485, may be usefully quoted (*g*):

"If the mob collectively or a part of it, or any individual within or before the expiration of, that hour attempts or begins

(*g*) See also cases cited *ante*, p. 114.

to perpetrate an outrage amounting to a felony, to pull down a house, or by any other act to violate the law, it is the duty of all present, of whatever description they may be, to endeavour to stop the mischief and to apprehend the offender."

POWERS OF PRIVATE PERSONS AS TO SUPPRESSION OF RIOTS.

The foregoing authorities relate to the powers of the common law with reference to offences against the peace generally, and do not, for the most part, refer to the particular class of crime with which we are now dealing. An exposition, however, of the law specially applicable to riots exists in the charge of TINDAL, C.J., delivered to the grand jury at the Bristol Special Commission on January 2nd, 1832, a charge "which will ever remain a record of the rights and privileges of Englishmen, and of those principles of constitutional liberty which can only exist where the individuality of the citizen is recognised and fostered instead of being annihilated or absorbed by Government."

In that charge (*h*) the LORD CHIEF JUSTICE said:

"It has been well said that the use of the law consists first in preserving men's persons from death and violence, next in securing to them the free enjoyment of their property. And although every single act of violence, and each individual breach of the law, tends to counteract and destroy this its primary use and object, yet do general risings and tumultuous meetings of the people in a more especial and particular manner produce this effect, not only removing all security, both from the persons and property of men, but for the time putting down the law itself and daring to usurp its place. The law of England hath accordingly, in proportion to the danger which it attaches to riotous and disorderly meetings of the people, made ample provision for preventing such offences, and for the prompt and effectual suppression of them whenever they arise; and I think it may not be unsuitable to the present occasion if

(*h*) *The Bristol Riots* (1832), 3 St. Tr. (N.S.), at p. 3; 5 C. & P. 261.

I proceed to call your attention, with some degree of detail, to the various provisions of the law for carrying that purpose into effect. In the first place, by the common law, every private person may lawfully endeavour of his own authority, and without any warrant or sanction of the magistrate, to suppress a riot by every means in his power. He may disperse, or assist in dispersing, those who are assembled ; he may stay those who are engaged in it from executing their purpose ; he may stop and prevent others whom he shall see coming up from joining the rest ; and not only has he the authority, but it is his bounden duty, as a good subject of the King, to perform this to the utmost of his ability. If the riot be general and dangerous, he may arm himself against the evil-doers to keep the peace. Such was the opinion of all the judges of England in the time of Queen Elizabeth, in a case called 'The Case of Armes' (*i*), although the judges add that it would 'be more discreet for every one in such a case to attend and be assistant to the justices, sheriff, or other ministers of the King in doing of it.' It would undoubtedly be more advisable so to do, for the presence and authority of the magistrate would restrain the proceedings to such extremities until the danger was sufficiently immediate, or until some felony was either committed or could not be prevented without recourse to arms ; and, at all events, the assistance given by men who act in subordination and concert with the civil magistrate will be more effectual to attain the object proposed than any efforts, however well-intended, of separated and disunited individuals. But if the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of the magistrate, it is the duty of every subject to act for himself and upon his own responsibility in suppressing a riotous and tumultuous assembly ; and he may be assured that whatever is honestly done by him in the execution of that object will be supported and justified by the common law."

The above-quoted extract from Tindal's, C.J., charge has been on several occasions recognised as the undoubted law of this country, and notably by Lord Denman at the Summer Assizes, 1848, and by Patteson, J., in his charge to the grand jury at Westminster

(*i*) *The Case of Armes* (1597), Poph. 121. See also Kel. 76, and *cf. per* Littledale, J., in *R.* v. *Pinney*, *ante*, p. 120 (c).

in Easter Term, 1848, and by WILLES, J., in *Philips* v. *Eyre* (1870), L. R. 6 Q. B. 15.

It follows, from the right to quell riotous disturbances by force, that those who resist will be criminally responsible for the consequences, and all acting in concert will be equally guilty in point of law:

"If a homicide takes place in consequence of that unlawful assembly, every one taking a part in the unlawful assembly may be himself personally responsible for the homicide" (*k*).

A private individual is not only under the duty of acting "of his own authority" in the suppression of riot, but is also liable to be called upon by the magistracy or peace officers to render every assistance in his power to suppress any tumultuous assembly.

DUTIES OF PRIVATE PERSONS TO AID POLICE AUTHORITIES.

To quote again from the above-mentioned charge of TINDAL, C.J.:

"By the common law, not only is each private subject bound to exert himself to the utmost, but every sheriff, constable, and other peace officer is called upon to do all that in them lies for the suppression of riot, and each has authority to command all other subjects of the King to assist them in that undertaking. By an early statute, which is still in force (the 13 Hen. 4. c. 7), any two justices, together with the sheriff or under-sheriff of the county, shall come with the power of the county, if need be, to arrest any rioters, and shall arrest them; and they have power to record that which they see done in their presence against the law: by which record the offenders shall be convicted, and may afterwards be brought to punishment. And here I must distinctly observe, that it is not left to the choice or will of the subject, as some have erroneously supposed, to attend or not to the call of the magistrate, as they think proper, but every man is bound, when called upon, under pain of fine and imprisonment, to yield a ready and implicit obedience to

(*k*) *Per* FITZGERALD, J., in *R. v. McNaughton and Others* (1881), 14 Cox C. C. 576.

the call of the magistrate, and to do his utmost in assisting him to suppress any tumultuous assembly; for in the succeeding reign another statute (*l*) was passed, which enacts 'that the King's liege people, being sufficient to travel, shall be assistant to the justices, sheriffs, and other officers upon reasonable warning, to ride with them, in aid to resist such riots, routs, and assemblies, on pain of imprisonment, and to make fine and ransom to the King.' In explanation of which statute, Dalton, an early writer of considerable authority, declares 'that the justices and sheriff may command and ought to have the aid and attendance of all knights, gentlemen, yeomen, husbandmen, labourers, tradesmen, servants, and apprentices, or all other persons being above the age of fifteen years and able to travel'" (*m*).

REFUSAL TO AID POLICE.

The consequence of a subject being bound to assist a constable when called on so to do is, that should he refuse he is indictable as for a misdemeanor. Nor is this a mere theoretical liability, as may be seen from the case of *R.* v. *Brown* (1841), C. & M. 314, where, on the occasion of a prize fight, a police constable charged the defendant to aid and assist him in quelling the riot. The constable was doing his duty, the breach of the peace being then actually in the course of being committed, and the duty of the constable being to put a stop thereto without waiting for a warrant (*n*). The defendant was convicted, and ALDERSON, B., in summing up to the jury, made the following observations:

"Firstly, you must be satisfied that the constable saw a breach of the peace. Secondly, you must be satisfied that there was a

(*l*) 2 Hen. 5, st. 1, c. 8.

(*m*) As to the *posse comitatus* and obedience to orders of sheriffs, see the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 8. The reference in Dalton here alluded to is Dalt. ch. 95. See also 2 Inst. 194, and *R.* v. *Pinney* (1832), 3 St. Tr. (N.S.) 11; 5 C. & P. 276.

The word "travel" above used should be "work," the Norman French word being *travailler*. The statute 13 Hen. 4, c. 7, and 2 Hen. 5, st. 1, c. 8, are in Norman French on the Parliament Roll.

(*n*) See Law Times Newspaper, June 25th, 1868.

reasonable necessity for the constable Herbert calling upon other persons for their assistance and support; and, in this case, there is no doubt that the constable could not by his own unaided exertions have put an end to the combat. Lastly, the prosecutor must prove that the defendant was duly called upon to render his assistance, and that without any physical impossibility or lawful excuse he refused to give it. Whether the aid of the defendant, if given, would have proved sufficient or useful, is not the question or criterion. Every man might make that excuse, and say, that his individual aid would have done no good; but the defendant's refusal may have been, and, perhaps was, the cause of that of many others. Every man is bound to set a good example to others by doing his duty in preserving the public peace" (*o*).

While imposing this duty upon private individuals, the law has not omitted to extend to them its protection, and persons therefore assisting a constable, whether ordered to do so or not, are as much under the protection of the law as the constable himself, and the general rule of law will equally apply to them, for where persons having authority to arrest or imprison use the proper means for that purpose, and are resisted in so doing and killed, it will be murder in all that take an active part in such resistance. This rule:

"Extends to the cases of private persons interposing for the prevention of mischief from an affray, or to endeavour to apprehend felons and bring them to justice, such persons being likewise in the discharge of a duty cast upon them by the law. The law is their warrant, and they may be not improperly considered as persons engaged in the public service, and for the advancement of justice, though without any special appointment; and being so considered, they are under the same protection as the ordinary ministers of justice" (*p*).

(*o*) A form of indictment for this offence is given in this case. See also *R.* v. *Sherlock* (1866), L. R. 1 C. C. R. 20; 35 L. J. M. C. 92; 13 L. T. (N.S.) 623; 10 Cox C. C. 170.

(*p*) Fost. C. L. 309; 1 Hale, P. C. 462. 463; *R.* v. *Porter* (1873), 12 Cox C. C. 444.

The protection thus extended to those who assist peace officers in the suppression of disturbances or the arrest of felons, attaches "*eundo, morando, et redeundo*," and in a case of *R.* v. *Phelps* (1841), C. & M. 180, where a man was returning from a station-house, after having assisted a constable to apprehend and there lodge one charged with larceny, and was killed on such return, he was held by Coltman, J., to have been still under the protection of the law (*q*).

Arrest without Warrant.

There are certain statutes which, although they do not deal specifically with riots, may not infrequently have to be resorted to in order to put an end to, if not the actual riot itself, acts which accompany riots, *e.g.*, damage to property. Amongst such statutes authorising arrest without warrant are—

The Vagrancy Act, 1824 (5 Geo. 4, c. 83). By s. 4 of this Act any person armed with a gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, . . . is to be deemed a rogue and vagabond and by ss. 6, 11, any person may apprehend an offender against this statute.

The Malicious Damage Act, 1861 (24 & 25 Vict. c. 97). By s. 61, the owner of property injured, or his servant or a person authorised by him, may arrest any person found committing an offence against that statute.

The Larceny Act, 1861 (24 & 25 Vict. c. 96). Any person found committing any offence against this Act,

(*q*) See also the *Sissinghurst House Case* (1673), 1 Hale, P. C. 461; 3 Russ. Cr. & M., 6th ed., pp. 72, 78, 119.

except angling in the daytime, may be arrested by any person (s. 103) (*r*).

By 2 & 3 Vict. c. 47, s. 66 (The Metropolitan Police Act, 1839), and 2 & 3 Vict. c. xciv., s. 46 (The City of London Police Act, 1839), the owner of any property or his servant may take into custody any person found committing any indictable or summary offence punishable by virtue of that statute without warrant, and may be detained till a constable be found (*s*).

POLICE AND SPECIAL CONSTABLES.

Much of what has been said in the preceding section will be equally applicable here, for all civil authorities retain the duties and powers given to private persons at common law, neither curtailed nor altered, and in addition they possess certain wider powers and more general protection in respect of any action they may take under and by virtue of their office.

It will not be necessary here to specify the various Acts of Parliament under which the permanent police force of the county exists, they will be found in 9 Chitty's Statutes, 5th ed., tit. "Police."

APPOINTMENT OF SPECIAL CONSTABLES.

Special constables or private persons invested with the rights and duties of ordinary constables for a particular occasion only, or for a limited period, are appointed under the Special Constables Act, 1831 (1 &

(*r*) See *Griffith* v. *Taylor* (1876), L. R. 2 C. P. D. 194; 46 L. J. C. P. 152; 41 J. P. 340; *R.* v. *Fenley* (1902), 20 Cox C. C. 252.

(*s*) See *Simmons* v. *Millinger* (1846), 2 C. B. 524; *Dowell* v. *Bedingfield* (1841), 1 C. & M. 9; *Home* v. *Grimble* (1841), 1 C. & M. 17.

2 Will. 4, c. 41) (*t*), the first section of which is as follows :

"In all cases where it shall be made to appear to any two or more justices of the peace of any county, riding, or division having a separate commission of the peace, or to any two or more justices of the peace of any liberty, franchise, city, or town in England or Wales, upon the oath of any credible witness, that any tumult, riot, or felony has taken place or may be reasonably apprehended in any parish, township, or place situate within the division or limits for which the said respective justices usually act, and such justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants and the security of the property in any such parish, township, or place as aforesaid, then and in every such case such justices, or any two or more justices acting for the same division or limits, are hereby authorised to nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of constable) residing in such parish, township, or place as aforesaid, or in the neighbourhood thereof, to act as special constables, for such time and in such manner as to the said justices shall seem fit and necessary, for the preservation of the public peace, and for the protection of the inhabitants and the security of the property in such parish, township, or place ; and the justices of the peace who shall appoint any special constables by virtue of this Act, or any one of them, or any other justice of the peace acting for the same division or limits, are and is hereby authorised to administer to every person so appointed the following oath ; that is to say,

"'I A. B., do swear that I will well and truly serve our sovereign lord the King in the office of special constable for the parish [or township] of , without favour or affection, malice or ill-will ; and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of his Majesty's subjects ; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law. So help me God' (*u*).

(*t*) As to special constables in boroughs, see *post*, p. 138.

(*u*) See now the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), ss. 12 (4), 13.

"Provided always, that whenever it shall be deemed necessary to nominate and appoint such special constables as aforesaid notice of such nomination and appointment, and of the circumstances which have rendered such nomination and appointment expedient, shall be forthwith transmitted by the justices making such nomination and appointment to one of his Majesty's principal Secretaries of State and to the lieutenant of the county."

The only condition precedent essential to the operation of this statute is that one credible witness shall state upon oath, before two justices (or before the sitting police magistrate in the metropolis, by virtue of 2 & 3 Vict. c. 71, s. 14, and if in the city of London before an alderman : 3 & 4 Vict. c. 84, s. 15, and 11 & 12 Vict. c. 43, s. 34), that a tumult, riot, or felony has taken place, or is expected to take place, and that the existing force for preserving the peace is insufficient to protect persons and property. The Secretary of State may, under s. 2, order persons to be sworn in, though otherwise exempt by law, but such persons are only to be liable to serve as special constables for two months from the date of their appointment ; and the Secretary of State may also order the lieutenant of any county to cause special constables to be appointed, such appointment being for three calendar months. The persons exempt by law are enumerated in s. 6 of 5 & 6 Vict. c. 109 (The Parish Constables Act, 1842), and the list includes, among others, peers, members of Parliament, clergymen of any recognised denomination, schoolmasters, barristers and solicitors in actual practice, coroners, keepers of gaols, doctors, surgeons and apothecaries, army or navy or yeomanry full pay officers, pilots, officers of customs, sheriffs' officers, household servants of the King, clerks to guardians,

parish clerks, registrars of births, deaths, and marriages, and churchwardens, overseers, and all relieving officers; also by the operation of s. 5 of the Act of 1842, all persons under 25 and over 55 years of age, or persons rated to the county or other rate at less than £4.

By 17 & 18 Vict. c. 102, s. 8, no person having a right to vote at a Parliamentary election for a particular place is liable to serve as a special constable at or during such election, without his consent (*x*). The power to appoint constables where danger to the peace is occasioned by disturbances upon public works has already been mentioned. See 1 & 2 Vict. c. 80, and *R.* v. *Cheshire Lines Committee* (1873), L. R. 8 Q. B. 344. Sections 7 and 8 of the statute provide penalties upon persons legally liable to serve in the office of special constable wilfully refusing to take the oath (*y*) when required, or refusing to serve, or disobeying orders or directions given to him for the performance of his duties. Refusal to serve also renders a person liable to indictment (*z*).

SUPPRESSION OF RIOTS.

The fourth section of 1 & 2 Will. 4, c. 41, enacts:

"The justices of the peace who shall have appointed any special constables under this Act, or any two of them, or the justices acting for the division or limits within which such special constables shall have been called out, at a special session of such last-mentioned justices, or the major part of

(*x*) A similar provision is contained in 45 & 46 Vict. c. 50, s. 196, as to boroughs and municipal elections.

(*y*) See *The Bristol Riots: per* TINDAL, C.J. (1832), 3 St. Tr. (N.S.), at p. 6.

(*z*) See *ante*, p. 129.

such last-mentioned justices at such special session, shall have power to make such orders and regulations as may from time to time be necessary and expedient for rendering such special constables more efficient for the preservation of the public peace, and shall also have power to remove any such special constable from his office for any misconduct or neglect of duty therein."

SERVING OUT OF THE COUNTY.

By s. 6, special constables may be ordered by the justices of the division in which they are appointed, to act in any adjoining county, if two justices of such adjoining county shall satisfy the justices by whom they were appointed that extraordinary circumstances exist rendering such service expedient, and they will possess the same powers as within their original jurisdiction. This power does not seem to be extended to the lord lieutenant, whose powers are, by s. 3, limited to his own county. By an amending Act of 1835, 5 & 6 Will. 4, c. 43, persons may act as special constables though not resident in the parish or township, or in the neighbourhood thereof. In the case of the Bull Ring riots at Birmingham, sixty of the Metropolitan police force were taken to Birmingham, and there sworn in under the provisions of this statute (*a*).

A special constable duly appointed generally under this Act continues to be such constable, with all the powers and privileges of a constable at common law or by statute (*b*) till his services are either determined or

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(*a*) See *R.* v. *Collins* (1839), 3 St. Tr. (N.S.), p. 1149; *R.* v. *Neale* (1839), 9 C. & P. 431; and the Police Act, 1890 (53 & 54 Vict. c. 45), ss. 25, 28, which enables the police of one force to assist those of any other force without being sworn as special constables.

(*b*) See s. 11 as to assaults on special constables. This seems superfluous. See 24 & 25 Vict. c. 100, s. 38, which replaced 9 Geo. 4, c. 31, s. 25.

suspended under s. 9 of 1 & 2 Will. 4, c. 41, which provides for the holding of special sessions for the express purpose of determining or suspending the services of all or any of the special constables previously appointed under the statute (*R.* v. *Porter* (1841), 9 C. & P. 778). In this case eight years had elapsed from the appointment to the date of the trial, at which the question of the duration of the office arose. Care should be taken that this special session is duly held when the services of the special constables appointed under the Act, but for no specified time, can be dispensed with (*c*). If, however, the appointments are made for one or two months, or for any definite period, the powers of the constables so appointed cease at the expiration of such period, and this is the course usually adopted, and which was in fact adopted at the general appointment of special constables in January, 1888, in the metropolis, for unless the appointment is duly revoked, or is only for a limited period, the special constables will continue liable for an indefinite period to be called upon to act upon any occasion that may be deemed right, for if they preserve their privileges, they must also remain subject to the duties of their position.

By s. 13, justices in special sessions may order allowances to the special constables, such allowances and other expenses for staves, etc. to be paid out of the county rate (*d*), special provision being made for such payments in places not contributing to the county rate (*e*).

(*c*) See *R.* v. *Best* (1847), 16 L. J. M. C. 102.

(*d*) See *R.* v. *Hulton* (1849), 19 L. J. M. C. 32; *R.* v. *Hamilton* (1868), L. R. 3 Q. B. 718; *R.* v. *Lord Newborough* (1869), L. R. 4 Q. B. 585; *R.* v. *Middlesex JJ.* (1868), 32 J. P. 661.

(*e*) See now 51 & 52 Vict. c. 41, ss. 48, 126 (Local Government Act, 1888), and 53 & 54 Vict. c. 45, s. 28 (Police Act, 1890), as to the metropolitan police district.

At the close of the period of service, by s. 10, the constables are required to deliver up, under penalties for not so doing, any staves or other articles given to them for the purposes of their office (*f*). This statute only applies to England and Wales, and Berwick-on-Tweed (*g*).

BOROUGH SPECIAL CONSTABLES.

By the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 196, two borough justices shall, in each October, appoint inhabitants of the borough (not being exempt under 5 & 6 Vict. c. 109, s. 6) to act as special constables in the borough, and the constables thus appointed have the same powers and immunities as constables under the Act of Will. 4. They are to act only upon a borough justices' warrant upon occasions when the ordinary police force of the borough is insufficient. Their remuneration is fixed by the 4th and 5th Schedules to the statute (*h*).

POWERS OF CONSTABLES TO ARREST.

Being clothed with the rights of constables as existing in 1831, the special constables appointed under the statutes just mentioned may do all that an ordinary constable can; but, as a general rule, it will be well for them to confine themselves to obeying the orders and regulations of the regular police force, or of some appointed chief. It will be sufficient to deal generally

(*f*) Section 15 of the statute puts a limitation of two months upon summary proceedings for penalties. The procedure for recovery of penalties will be in accordance with the Summary Jurisdiction Acts; the Summary Jurisdiction Act, 1884, repealing ss. 17, 18 and part of 16. Section 19, providing for notice of action, is repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

(*g*) See 20 Geo. 2, c. 42, s. 3.

(*h*) See also the Police Act, 1890 (53 & 54 Vict. c. 45).

with the powers given to the regular constables by the common statute law in reference to the particular offences dealt with herein.

On a reasonable suspicion of felony, founded upon facts within his own knowledge, or communicated to him by others, a police constable is justified and bound to arrest without warrant, and that whether a felony may in fact have been committed or not; and those charged must submit, provided that they know, or such circumstances exist that such knowledge ought to be presumed against them, that he is a police constable (1 East, P. C. 314; *Griffin* v. *Coleman* (1859), 4 H. & N. 265; 28 L. J. Exch. 134; *Hogg* v. *Ward* (1858), 3 H. & N. 417; 27 L. J. Exch. 446). It is no part of the duty of a constable to arrest a man upon the order of a private individual (*Parton* v. *Williams* (1820), 3 B. & Ald. 330), and therefore if a constable act upon an unreasonable charge, or of his own accord, or upon his own suspicion, without any express charge or warrant, he does it at his own peril as much as if he were a private person, but if it turn out that the party arrested has committed a felony, he is justified; so also if he has acted on his own suspicion that a felony has actually been committed by some one, and he had reasonable grounds for suspecting the party arrested, he is also justified in the arrest made under such circumstances; but from the necessity of certain cases a constable may, even at common law, justify the arrest of persons on his own suspicion of felony without the necessity of showing that a felony has really been committed, as, *e.g.*, the arrest of unknown persons carrying bundles in the night time (*i*).

(*i*) *Lawrence* v. *Hedger* (1810), 3 Taunt. 14.

When a person is arrested, any property in his possession believed to have been used by him for the purpose of committing the offence may be seized and detained as evidence in support of the charge (*Dillon* v. *O'Brien* (1887), 16 Cox C. C. 245).

To again quote the judgment of BLACKBURN, J., in *Allen* v. *London and South-Western Rail. Co.* (1870), 11 Cox C. C. 625:

"When a constable is the person who has taken another into custody without a warrant, the law is more favourable to him. It is his duty to act for the public benefit, and therefore the law gives him protection if he has a reasonable ground to believe that a felony has been committed, and that the person he took into custody has committed it. As I have said before in the course of the argument, I think a constable, in exercising the power that is given to him, should always take into consideration whether the circumstances are such that there is ground for thinking, if he did not exercise the summary power, the man would run away."

A constable has power to arrest, without warrant, any person found committing any misdemeanor, whether such misdemeanor be accompanied by an actual breach or disturbance of the peace (*k*). In actual breaches of the peace a constable may, by virtue of his office, interpose upon his own view for the purpose of preventing a threatened and imminent breach of the peace, and all persons called by him to his assistance in such interposition are protected (1 East, P. C. 303), and to accomplish his object may arrest the person menacing, and detain him in custody till the chance of the threat

(*k*) Some doubt appears to exist as to arrest for the offences at common law of forgery and perjury, which are not triable at quarter sessions of the peace; but probably in all cases of actual misfeasance, as distinguished from misdemeanors of non-feasance, *e.g.*, disobedience to an order for payment of money made in quarter sessions, the power of arrest as above stated exists.

being executed is over, and to carry him as soon as conveniently may be before a magistrate (2 Hawk. P. C., c. 12, s. 20; *Cohen* v. *Huskisson* and *R.* v. *Light*, *supra*), but if the threat seems an idle one and there has been no breach of the peace, the arrest would not be justifiable (*R.* v. *Bright* (1830), 4 C. & P. 387; *Wheeler* v. *Whiting* (1840), 9 C. & P. 262). For an assault or breach of the peace, or for an attempt to commit any felony committed within his own view, a constable may arrest the offender and keep him in custody until he can conveniently take him before a magistrate; but if the arrest is not made on the instant, it must be made so recently after as to make the offence and the apprehension one continued transaction. But a constable has not, without warrant, any authority to apprehend a person upon a charge of a mere breach of the peace after it is over, unless there is danger of its renewal, and in that case he may do so. So also he may arrest any person who encourages a prisoner in his custody to resist (*White* v. *Edmonds* (1791), 1 Peak. 89), or otherwise obstructs him in the execution of his duty (*Levy* v. *Edwards* (1823), 1 C. & P. 40).

By 2 & 3 Vict. c. 47, s. 64, Metropolitan police constables have power to arrest, without warrant, loose, idle, and disorderly persons about to commit a breach of the peace, *e.g.*, persons within the district proceeding to a prize fight beyond the district. As to the meaning of the words "loose, idle, etc.," see *Bowditch* v. *Balchin* (1850), 5 Exch. 378; 19 L. J. Exch. 337.

In all cases of misdemeanors in the nature of riots, an ordinary constable, and more especially a special constable, should, as a matter of precaution, and in some instances of necessity, notify either by words or

the usual symbols of authority that he is such officer, lest his interference should be mistaken for an intention to take part with the offending parties. And as to special constables, they should be guided by a rule of prudence not to interfere in cases of doubt, but act under the directions of those whose experience and habits of discipline enable them to form a correct judgment of the proper steps to be taken. The proper degree of force permissible must always depend upon the circumstances of each case where force may be required, and as in extreme cases private persons may use deadly weapons, so also may the police (*l*).

And it seems to be sound law as well as sound common sense, that all the circumstances of the particular assembly, and also of previous events, with which it may be reasonably connected, may be taken into consideration both in the justification of the preparations to meet the apprehended danger, and in the exertions used to quell the incipient disturbance. It was held, in *Redford* v. *Birley* (1822), 1 St. Tr. (N.S.), pp. 1071, 1191, 1223 ; and also in *Rex* v. *Hunt* (1820), 1 St. Tr. (N.S.), pp. 171, 464, 489 ; the former being an action against the yeomanry for injury sustained at Peterloo, and the latter an indictment against Henry Hunt for the same meeting—that general evidence of antecedent facts, such as resolutions passed at meetings (*m*) where he had presided, the

(*l*) See the extract from Hawkins, *ante*, p. 120 ; *Burdett* v. *Abbott* (1811), 14 East. 1 ; (1812), 4 Taunt. 401 ; and *R.* v. *Pinney*, *ante*.

(*m*) The resolutions are set out at 1 St. Tr. (N.S.) 463, 1224. As to other cases in which similar evidence was admitted, see *R.* v. *Hardy* (1794), 24 St. Tr. 435 ; *R.* v. *Watson* (1817), 32 St. Tr. 349 ; *R.* v. *Blake* (1844), 6 Q. B. 126 ; *R.* v. *Frost* (1839), 4 St. Tr. (N.S.) 86 ; 9 C. & P. 150 ; *R.* v. *O'Connell* (1843), 5 St. Tr. (N.S.) 670 ; *R.* v. *Graham and Burns* (1888), 16 Cox C. C. 420.

conduct of parties going to the meeting, the alarm felt by the neighbourhood, in a word, acts of all persons which might properly and fairly be looked at to ascertain the intention of the particular meeting, and the probable degree of violence that would be used by the mob if not overcome, and consequently, the degree of force requisite to put it down.

General Duties of Constables.

The general duties of constables are so admirably set forth in a "letter of instructions" that it is here appended.

Practical Directions as to the Criminal Duties of Constables generally and the manner of executing them.

"The constable may arrest one whom he has just cause to suspect to be about to commit a felony. Thus, when a drunken person, or a man in a violent passion, threatens the life of another, the constable should interfere and arrest.

"He should arrest any person having in his possession any pick-lock-key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or out-building, or any person armed with any gun, pistol, hanger, cutlass, bludgeon, or offensive weapon, or having upon him any instrument, with intent to commit any felonious act.

"Every person found in any dwelling-house, warehouse, coach-house, out-house, or stable, or in any enclosed yard, garden or area, and being there for any unlawful purpose, may be arrested.

"In each of these cases the constable must judge from the situation and behaviour of the party what his intention is. In some cases no doubt can exist; as when the party is a notorious thief, or acting with those who are thieves, or when the party is seen to try people's pockets in a crowd, or to attempt to break into a house, or to endeavour to take any property secretly from another. The constable will not act hastily, in case the intention is not clear, but content himself with watching closely the suspected party, that he may discover his design.

"The constable must arrest any one whom he sees in the act of committing a felony, or any one whom another positively

charges with having committed a felony, or whom another suspects of having committed a felony, if the suspicion appear to the constable to be well founded, and provided the person so suspecting go with the constable.

"Though no charge be made, yet if the constable suspect a person to have committed a felony he shall arrest him; and if he have reasonable grounds for his suspicion, he will be justified, even though it should afterwards appear that no felony was in fact committed; but the constable must be cautious in thus acting upon his own suspicions.

"Generally, if the arrest was made discreetly and fairly in pursuit of an offender, and not from any private malice or ill-will, the constable need not doubt that the law will protect him.

"If, after sunset and before sun-rising, the constable shall see any one carrying a bundle or goods which he suspects were stolen, he should stop and examine the person, and detain him; but here also he should judge from circumstances (such as appearance and manner of the party, his account of himself, and the like), whether he has really got stolen goods, before he actually takes him into custody.

"The constable must make every exertion to effect the arrest; and the law gives him abundant power for the purpose. If the felon, or party accused of felony, fly, he may be immediately followed wherever he goes; and if he takes refuge in a house the constable may break open the doors if necessary to get in, first stating who he is, and his business; but the breaking open outer doors is so dangerous a proceeding, that the constable should never resort to it except in extreme cases, and when an immediate arrest is necessary.

"There are some cases in which a constable may and ought to break into a house, although no felony has been committed, when the necessity of the case will not admit of delay, as when persons are fighting furiously in a house, or when a house has been entered by others with a felonious intent, and a felony will probably be committed unless the constable interfere, and there are no other means of entering; except in such cases, it is better in general that the constable should wait till he has a warrant from a magistrate for the purpose.

"If a prisoner should escape, he may be retaken, and in immediate pursuit the constable may follow him into any place or any house.

"If a constable finds his exertions insufficient to effect the arrest, he ought to require all persons present to assist him, and they are bound to do so.

"In cases of actual breaches of the peace, as riots, affrays, assaults, and the like, committed within the view of the constable, he should immediately interfere (first giving public notice of his office, if he be not already known), separate the combatants, and prevent others from joining in the affray. If the riot, etc., be of a serious nature, or if the offenders do not immediately desist, he should take them into custody, securing also the principal instigators of the tumult, and doing every thing in his power to restore quiet.

"A constable, in cases of assault which have not been committed in his presence, or within his view, is not authorised to arrest or assist in arresting the party charged, nor is he to receive a person so charged into his custody, unless the party has been arrested by some other constable who saw the assault committed.

"He may arrest anyone assaulting or opposing him in the execution of his duty.

"If a person forcibly enter the house of another, the constable may, at the request of the owner, turn him out directly; if he have entered peaceably, but having no right to enter, and the owner request the constable to turn him out, the constable should first request him to go out, and unless he do so, he should turn him out, in either case using no more force than is necessary for the purpose.

"When the offence has not yet been committed, but when a breach of the peace is likely to take place, as when persons are openly preparing to fight, the constable should take the parties concerned into custody: if they fly into a house, or are making preparations to fight within the house, the constable should enter the house to prevent them, and likewise take the parties into custody; and should the doors be closed, he may break them open if admission be refused, after giving notice of his office and his object in entering.

"If a party threaten another with immediate personal violence, or offer to strike, the constable should interfere and prevent a breach of the peace; if one draw a weapon upon another attempting to strike, the constable should take him into custody. If persons be merely quarrelling or insulting each other by words, the constable has no right to take them into custody, but should be ready to prevent a breach of the peace.

"If a party charged with a misdemeanor escape out of custody, he may be pursued immediately anywhere; and if he take refuge in a house, the doors may be broken open after demand of admission, and after notification by the constable of his office and object in coming.

"After arrest, the constable is in all cases to treat a prisoner properly, and impose only such constraint upon him as may be necessary for his safe custody.

"The constable is bound to follow the directions contained in a warrant, and to execute it with secrecy and despatch; the power given to him for the purpose of arresting has been already shown. If the warrant cannot be executed immediately, it should be executed as soon as possible afterwards.

"The constable must execute the warrant himself, or, when he calls in assistance, must be actually present. Upon all occasions he ought to state his authority if it be not generally known, and should show his warrant when required to do so, but he should never part with the possession of the warrant, as it may be wanted afterwards for his own justification.

"Upon the arrest being made, the prisoner is to be taken before the magistrate as soon as convenient. When the prisoner is brought to the justice, he still remains in custody of the constable until his discharge or committal, or until the officer receives the orders of the justice.

"The constable may enter a house to search for stolen goods, having first got a search warrant from a magistrate for that purpose. He should, when it is possible so to do, execute it in the daytime. If he find the goods mentioned, he is to take them to a magistrate, and, when the warrant so directs, he must take the person also in whose possession they are found. To avoid mistakes, the person who applies for the warrant ought to attend at the search to identify the goods" (*n*).

The advantage of having a warrant, or of acting in aid of an officer who has one, is that the constable or person aiding will not be liable to any civil action for its execution, notwithstanding any defect of jurisdiction in the justice, unless upon demand, previously made, he refuses to give a copy of the warrant.

Grave and very difficult questions have also arisen as to the degree of criminality in those who in the course of resistance should kill the officers engaged, when it turns out to be an illegal warrant, and whether the

(*n*) The remainder of the Instructions refers only to vagrancy and similar offences. The question of arrest is fully dealt with in Giffard's Jurisdiction of Magistrates, 2nd ed., p. 307.

crime would be murder or manslaughter (*o*); but these cannot be discussed at length. Nor is it necessary, as if the parties are so far engaged in an unlawful act, that a private individual would be justified in arresting them, then the effect of the warrant being bad could not be a justification. Again, also, let it be remarked that where there is a general resolution against *all* opposers, whether such resolution appears upon evidence to have been actually and explicitly entered into by the confederates, or may be reasonably collected from their number, arms, or behaviour at or before the scene of action, and homicide is committed by any of the party, every person present in the sense of the law when the homicide is committed will be involved in the guilt of him who gave the mortal blow.

It may also be safely laid down that, although an illegal arrest may be resisted, it by no means follows that if death ensues very severe punishment may not be inflicted. It would often amount to manslaughter, which *may* be punished by penal servitude for life, and it might even amount to murder. An officer or other person aiding him is entitled to the protection of the law as a minister of justice, *eundo, morando, et redeundo*, that is, on his way to do his duty, whilst doing it, and also against all opposition on his return (*R.* v. *Phelps*, *ante*, p. 131). It should be added that by s. 65 of the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), power is given to any constable to apprehend without warrant any person charged by any other person with committing any aggravated assault, if he shall have good

(*o*) See 3 Russ. Cr. & M., 6th ed., pp. 70—120, where the whole subject of arrest with reference to the crime of murder is exhaustively dealt with.

reason to believe that such assault has been committed, although not within view of such constable. But this would seem not to apply to special constables appointed under the 1 & 2 Will. 4, c. 41, for s. 5 expressly limits the privileges to those "now" enjoyed, that is, at the time of the passing of the Act. Compare the repealed Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 76.

DUTIES OF THE MILITARY.

The jealousies which have always been evinced in this country of any approach to military government was probably the foundation of the erroneous opinion held in 1780 that soldiers were powerless without the authority of the civil magistrates; and the surprise expressed in 1832, at that part of the charge of TINDAL, C.J., which was specially directed to this subject, showed that the error was far from being extinguished (*p*).

MANSFIELD, C.J., in *Burdett* v. *Abbott* (1811), 4 Taunt. 402, had already explained the position of the military. He said:

"Since much has been said about soldiers, I will correct a strange mistaken notion that has got abroad, that because men are soldiers, therefore they cease to be citizens. A soldier is gifted with all the rights of other citizens, and is bound to all the duties of other citizens, and he is as much bound to prevent a felony or breach of the peace as any other citizen. In 1780 this mistake extended to an alarming degree; soldiers with arms in their hands stood by and saw felonies committed, houses burnt and pulled down before their eyes, by persons whom they might lawfully have put to death, if they could not otherwise prevent them without interfering; some because they had no commanding officer with them to give them the command, and

(*p*) *R.* v. *Pinney* (1832), 5 C. & P. 254; 3 St. Tr. (N.S.) 1.

some because there was no justice of the peace with them. It is the more extraordinary, because formerly the *posse comitatus*, which was the strength to prevent felonies, must in a great proportion have consisted of military tenants who held lands by the tenure of military service. If it is necessary for the prevention of mischief, or for the execution of the law, it is not only the right of soldiers, but it is their duty to exert themselves in assisting the execution of a legal process, or to prevent any crime or mischief being committed. It is, therefore, highly important that the mistake should be corrected, which supposes that an Englishman, by taking upon him the additional character of a soldier, puts off any of the rights and duties of an Englishman."

That part of the charge of TINDAL, C.J., above mentioned, which deals with this subject, is as follows:

"If the occasion demands immediate action, and no opportunity is given for procuring the advice or the sanction of the magistrate, it is the duty of every subject to act for himself and upon his own responsibility in suppressing a riotous and tumultuous assembly, and he may be assured that whatever is honestly done by him in the execution of that object will be supported and justified by the common law. And whilst I am stating the obligation imposed by the law on every subject of the realm, I wish to observe that the law acknowledges no distinction in this respect between the soldier and the private individual. The soldier is still a citizen, lying under the same obligation, and invested with the same authority, to preserve the peace of the King as any other subject. If the one is bound to attend the call of the civil magistrate, so also is the soldier; if the one may interfere for that purpose when the occasion demands it, without the requisition of the magistrate, so may the other too; if the one may employ arms for that purpose, where arms are necessary, the soldier may do the same. Undoubtedly, the same exercise of discretion, which requires the private subject to act in subordination to and in aid of the magistrate, rather than upon his own authority, before recourse is had to arms, ought to operate in a still stronger degree with a military force. But where the danger is pressing and immediate, where a felony has actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authorities—the military subjects of the King, like his civil subjects, not only may, but are bound to do their utmost,

of their own authority, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people" (*q*).

INDEPENDENT ACTION OF MILITARY.

Instances occurred during the Luddite disturbances at Nottingham (1811—1816) of the military acting alone, and thereby doing what unquestionably is in strict accordance with the law of this country, though prudence and regard to public opinion rightly keep back the military even more than mere private individuals from voluntary interference. The instances are certainly rare on which the military have taken any such spontaneous action.

LITTLEDALE, J., in *R.* v. *Pinney* (1832), 3 B. & Ad. 953; 5 C. & P. 278; 3 St. Tr. (N.S.), at p. 531, said:

"A military officer may act without the order of the magistrate if he chooses to take the responsiblity. But although that is strict law, there are few military men who will take upon themselves so to act. Except on the most pressing occasions, and where it is likely to be attended with serious loss of life, an officer is generally unwilling to act without the magistrate's authority. But that need not be given in person, and may be an authority in writing. It is enough if the military have authority to act."

Soldiers by their mere presence may be of great assistance in putting a stop to rioting, but such aid may be effectually rendered without use of the sword or the gun: "The first and paramount duty of the military is

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(*q*) *The Bristol Riots* (1832), 3 St. Tr. (N.S.), at p. 4, and sub. tit. *R.* v. *Pinney* (1832), 5 C. & P., at p. 262. And see the Featherstone Report, *post*.

to spare no effort to put down disorder without using firearms at all, except in the last resort" (*r*).

The actual order to fire is a matter of discretion, but only to be given in the greatest extremity; and a commanding officer may hesitate to give such an order except in the presence and with the concurrence of a civil magistrate, although not an essential legal accompaniment.

The famous riots, known as the Lord George Gordon or "No Popery" Riots in London, in 1780, and the action of the military upon the occasion of them, provide a good illustration of the powers of the military in quelling popular disturbances. The facts and incidents of the riots are fully given in histories of the period (*s*), and it is therefore unnecessary to recapitulate them here; it is sufficient to say that from June 2nd to June 7th, 1780, a riot of unparalleled fury and destructiveness continued unchecked by the civil power; "in broad sunshine public buildings and private houses were attacked and entered, and the furniture deliberately brought out and consumed in fires. And all this was done in the view of patient magistrates." The riots were afterwards held to have been distinctly of such a character as to amount to a levying of war against the Crown; and in many instances the outrages amounted to felonious rioting, by reason of the houses and public buildings being totally demolished by the various bands into which the mob divided itself

(*r*) Report of the committee (Lord Bowen, Sir Albert K. Rollit and R. B. Haldane, Q.C.) appointed to inquire into the Featherstone disturbances, September, 1893, see *post*.

(*s*) See *R.* v. *Gordon* (1781), 21 St. Tr. 485; Annual Register for 1780; Adolphus' History of England, Vol. III.; and *R.* v. *Kennett* (1781), 5 C. & P. 282, in note to *R.* v. *Pinney*.

in contravention of the then unrepealed sections of the Riot Act. It was stated by Lord LOUGHBOROUGH that the proclamation under the Riot Act was not read by any magistrate during the disturbances (*t*), but this appears to be inaccurate: it certainly was read while the attack on Lord Mansfield's house was in progress, and several persons were shot by the military at the directions of the magistrate who had read it, but without causing the rioters to desist. The effect of such proclamation, of course, only applied to those who were actually engaged in that particular incident of the general riot, and the soldiery appear to have been justified in the course they there took, as a felony, that is, the demolition of the house, was in actual progress, and the number of that part of the mob was such that to arrest the individual rioters was impossible. On June 7th a Royal Proclamation was issued under the advice of the Attorney-General, which recited the disturbances of the previous days, and declared that "it is necessary from the circumstances before mentioned to employ the military force, with which we are by law entrusted, for the immediate suppression of such *rebellious and traitorous* attempts now making against the peace and dignity of the Crown." The "General Orders" issued to the military by virtue of such proclamation commanded "the military to act without waiting for directions from the civil magistrate." Under the energetic measures taken by the soldiery, the riot was entirely quelled on the same day (June 7th), but not before

(*t*) Lord LOUGHBOROUGH presided at the Special Commission for the trial of the offenders on June 28th, 1780, and the above statement occurred in the course of his charge to the grand jury. See 5 C. & P. 261.

many persons, about 285 in number, were killed, and many others seriously wounded. It is obvious from a perusal of the various accounts of this riot, that its magnitude resulted in a great measure from the inertness of the magistracy at its commencement. That the magistrates, however, had some good excuse for their omission to take prompt and early measures will be conceded, when it is remembered that twelve years before a magistrate of Surrey had been tried for his life for the action taken by him in the St. George's Fields Riots in 1768 (*u*). We have seen (*x*) that private persons in such riots as "savour of rebellion" may arm themselves and use their arms; but this does not occur in cases of ordinary riots, which are not of such a serious character. In ordinary riots private persons are bound to use every endeavour to suppress them; and on an exactly similar footing stand the military, as has been pointed out by Tindal, C.J. Private persons or the military are to act of their own authority to suppress felonious rioting of any character, without the interposition of the magistrate, and the powers of private persons as well as the military extend even to the putting to death of the offenders engaged in felonious rioting, if they could not otherwise have prevented them from continuing the felony (*y*). Under the common law the use of deadly weapons, whether by private persons or military, is only justifiable in resisting felonious outrage, or arresting a felon, and it is even justifiable to kill the felon, either in the actual commission of the felony or to prevent his escape, if such

(*u*) See *post*, "Duties of Magistracy."
(*x*) 1 Hawk. P. C. c. 65, s. 11, *ante*, p. 120.
(*y*) 1 Hawk. P. C. c. 28, s. 23.

killing is the only course open to those acting in vindication of the law.

"The soldier is bound by all the duties of other citizens, and clothed with all the rights of other citizens; and he is as much bound to prevent a breach of the peace or felony as any other citizen."

MILITARY ACTING IN AID OF CIVIL POWER.

Under the ordinary law, therefore, the military acting in aid of the civil power have exactly similar powers to those enjoyed by private persons, but no greater.

"The military power at common law can only be used under and in aid of, and as part of, the civil power, and therefore only when citizens could use deadly weapons in aid of the civil power, that is, either in dispersing an assembly declared felonious under the Riot Act, or in resisting actual felonious outrage, or in arresting the felons, and subduing their resistance to arrest."

Such, therefore, being the powers and duties of the military acting as part of the civil power, it is important to consider under what provisions of the law could be justified the acts of the soldiery during the Gordon Riots, when acting, as they subsequently did, independently of the civil authorities. Private citizens and the military are bound to use their best endeavours to quell a riot: and should the riot—at common law a misdemeanor only—become, either by reason of its continuance after proclamation, or by reason of the rioters demolishing property, of a felonious character, private persons and the military may use stronger measures to suppress it, to the extent even of using deadly weapons under such circumstances as have been already mentioned. In the Gordon Riots, however, where large bands of men moved about from one part of London to

another, the proclamation under the Riot Act was to a great extent futile, the particular band of rioters to which such proclamation was made had probably dispersed before the lapse of the hour to other parts of London. Again, the bands might not have been met with when actually engaged in felonious outrage upon property. But the military, during the latter part of these riots, and after the Royal Proclamation had issued, attacked the rioters wherever met with, and of their own authority, acting entirely in independence of the civil magistrates, and attacked them whether the rioters were found actually engaged in outrage or not, without any proclamation under the Riot Act having first been made, with deadly weapons, and numbers were killed. This was not justifiable, as we have seen, either at common law or by statute. The explanation is that the Gordon Riots "savoured," as it was termed, "of rebellion." Rebellion is war against the Crown, and "to constitute the crime of levying of war there must be an insurrection; there must be force accompanying it, and it must be for a general object" (*z*).

"The pomp and circumstances of military array, such as usually attend regular warfare, are by no means necessary to constitute an actual levying of war, . . . Rebellion, at its first commencement, is rarely found in military discipline or array, although a little success may soon enable it to assume them" (*a*).

Rebellion, therefore, being of such a nature, the military were justified in adopting measures of war

(*z*) *R.* v. *Frost* (1839), 4 St. Tr. (N.S.) 85; 9 C. & P. 141; Fost. C. L. 33; Hale P. C. tit. "Treason."

(*a*) *Per* ABBOTT, C.J. (afterwards Lord TENTERDEN), in *R.* v. *Thistlewood* (1820), 33 St. Tr. 681. See also *R.* v. *Hardie* (1820), 1 St. Tr. (N.S.) 609; *R.* v. *O'Doherty* (1848), 6 St. Tr. (N.S.) 831; and *R.* v. *Gallagher* (1883), 15 Cox C. C. 291.

against those taking part in the "levying of war against the Crown," and to attack in warlike fashion wherever and whenever they should meet with the bands of rioters. The circumstances had plainly exceeded the powers given to the military as well as to private citizens under the common law and statute law, actual warfare against the Crown was being carried on, the Crown being entitled to the absolute control of all bodies of armed men issued a proclamation of war against the rioters: a state of war ensued, and the martial law, or the law of war, was applicable, superseding for the time the ordinary municipal law, which had been found powerless to grapple with such a state of facts.

In cases, however, when there is a well-defined band of rioters having some particular object in view, and practically confined in its operations to a narrow space, the powers of the ordinary law are sufficiently wide to be effectual, for there when the Riot Act proclamation (which may be regarded as equivalent to a declaration of "local warfare") has been read, and the riot has become felonious, both private citizens and the military may interfere and use armed force to apprehend the felons and quell the disturbance. But this power only applies as against the same body of rioters to whom the statutory proclamation has already been made, and in such a case as the Gordon Riots was ineffectual. When the armed and forcible resistance to authority becomes general, the crime amounts to a levying of war against the Crown; there are opposing forces, the armed forces of the Crown on the one hand, and the armed band or bands of rioters on the other; a state of war resulting, actual warfare and the law of war come into operation,

authorising indiscriminate attacks upon the enemy, and the summary trial and punishment of such as may be taken prisoners, although in the case which we have been considering this second element of martial law was not called into operation.

Two other cases should be mentioned here, in which the conduct of the military was much discussed. The former of these (*R.* v. *Pinney* (1832), 3 St. Tr. (N.S.), at pp. 1, 11 ; 5 C. & P. 254) arose out of the Bristol Riots, the serious result of which was mainly owing to the want of vigorous action by the military. The rioting in this case amounted to felonious rioting, by reason of the reading of the Riot Act proclamation, and the great destruction of property by the rioters. In the latter (*R.* v. *Frost* (1839), 4 St. Tr. (N.S.) 85 ; 9 C. & P. 129), where the defendant and eleven others were tried for high treason in respect of the parts taken by them in the attack upon Newport in 1839, the prompt and vigorous conduct of the military force affords a striking contrast to the neglect and supineness of Colonel Brereton, the commanding officer of the troops at Bristol.

The facts of these two cases would occupy too much space to relate here (*b*), but it may be noticed that the earlier case affords an illustration of rioting which had not for its object a matter of general and public concern, and against which, therefore, the military, if they had acted at all, would have done so as part of and in aid of the civil power, and would have been justified in the use of deadly weapons to disperse an assembly "declared

(*b*) The evidence in *R.* v. *Pinney* and *R.* v. *Frost* is set out, and a full account of the two trials given in 2 Townsend's Mod. St. Tr. 272, and 1 Townsend's Mod. St. Tr. 1, respectively.

felonious under the Riot Act, to resist actual felonious outrage, and in arresting the felons and subduing their resistance to arrest"; while the latter is an illustration of cases in which the military might have taken independent action and attacked the armed force led by the defendant Frost, the attack upon Newport being part of a treasonable outbreak and amounting to the levying of war against the Crown, and therefore justifying measures of war against the insurgents.

The next case to be noticed is *Redford* v. *Birley* (1822), 1 St. Tr. (N.S.) 1071: 3 Stark. 76, which was an action against certain officers and men of the Manchester Yeomanry for damages for an assault alleged to have been committed upon the occasion afterwards known as the "Manchester Massacre," on August 16th, 1819. A justification was pleaded to the effect that the assault was properly committed by the defendants in dispersing an unlawful assembly (being the assembly held on August 16th, 1819, at St. Peter's Fields, Manchester, and the subject of the trial of Mr. Hunt, 1 St. Tr. (N.S.) 171), in which the plaintiff was taking part. During the meeting, the magistrates, acting on sworn depositions of terror and alarm, issued warrants for the arrest of Hunt and others of the defendants in the case of *R.* v. *Hunt* above mentioned. The warrants were directed to constables, who, accompanied at the request of the magistrates by the military, proceeded to execute the warrants. There was clear evidence in the case that, owing to the character of the meeting and the attitude of those composing the assembly, the warrants could not have been executed by the constables without the aid of the military. It was held that it was the duty of the defendants and the

military forces, when requested by the magistrates to execute such warrants, to disperse the meeting and to aid generally in preserving the peace; and the defendants were justified in committing the acts complained of, if they were acting without excess in aid and at the request of the civil power. The question for the jury was not whether it was necessary or expedient to call in the military, but whether the military were properly acting in aid of the magistrates; and if in so acting without excess they committed the acts complained of, no action of trespass would lie against them. Nor, when a warrant is granted by the magistrates, is it properly questionable in an action against the military whether the magistrates were or were not justified in the warrant which they actually granted.

The duty of the military in acting in aid of the civil authorities did not cease upon the apprehension of the persons named in the warrant, for, as was said by Bayley, J.:

"The purposes of the written warrant will be answered, and answered only, provided those persons still remain in custody and are not rescued; and it may be a matter of prudent discretion in that case to consider whether, if there was an appearance of rescue, it would not be in furtherance of the aid of the civil power for the military to do that which might prevent any such rescue, and whether they might not go on, therefore, in order to disperse the mob, and, in so dispersing the mob, doing them no unnecessary degree of injury, and doing no injury to anyone who should not resist and set himself in defiance and in battle array against those persons who were attempting to make the dispersion" (*c*).

If they are engaged in executing a warrant, then they will be protected in enforcing that which it is their legal duty to enforce, to the same extent as

(*c*) *Redford* v. *Birley* (1822), 1 St. Tr. (N.S.), at p. 1247.

constables. As to the meaning of acts done under authority, see *per* BAYLEY, J., in *Smith* v. *Shaw* (1829), 10 B. & C. 284. They would be within 24 Geo. 2, c. 44, s. 6, for the purposes of civil actions, and their criminal responsibility will depend upon whether what they did was necessary to execute such warrant, and they are not to decide upon the propriety of its being issued. If called in to aid generally, they must aid and assist "in such commands as the magistrates are by law entitled to impose" (*per* HOLROYD, J., in *Redford* v. *Birley*, *ante*). In very few instances would an officer be justified in refusing so to aid, and in hardly any case would the officer or soldier be justified in refusing to obey the orders given by their superior. It is, however, right to state, that there seems to be nothing to free the military man from the responsibility that all persons similarly engaged incur. Like all other ministers of the law, whether executing warrants or obeying parol orders, which in cases of riots seem to have, under 34 Edw. 3, c. 1, the force of warrants (see 1 Hawk. c. 65, s. 18, and *Redford* v. *Birley*, at p. 1213, *per* HOLROYD, J.), they are exposed to an indictment or a court-martial for disobedience, or, if death ensues, are liable to be indicted for manslaughter or murder. Neither a military man nor a civilian is justified in causing death, *merely* because he is ordered to do so. Resistance, indeed, must be put down; and those who are engaged in the unlawful acts are not the judges of what degree of force is necessary. It has already been shown, that the most violent means are justifiable when demanded by the occasion; and if any choose to remain as spectators, fancying that because they do not take an active part, they are therefore not participators, they

will find the risk they run is very great. They may be thought so, if they should happen to be tried, and are quite certain of being treated as such, by those whose duty it is to restore peace. Here, too, it may be remarked, that the military or constables, being engaged in a lawful purpose, would not collectively be answerable for any misconduct. Not so the mob. In the one case each must take the consequences of the act of any one, while in the other no person will be answerable for the improper act of one, except that one only. See as to this, *per* HOLROYD, J., in *Redford* v. *Birley*, at p. 1210, and *per* BAYLEY, J., at p. 1248. The Riot Act, too, having been read, those continuing the tumult become guilty of felony; and as it is rarely read without reason, and as it expressly provides indemnity for all engaged in putting down the resistance, the same nicety in scanning the degree of violence can hardly be applied (*d*).

DEGREE OF FORCE JUSTIFIABLE—DEATH INFLICTED.

In the course of the Bristol Riots it appeared that a boy named Morris had been shot and killed by one Lewis, when acting in aid of the civil authorities in assisting to clear the streets after proclamation under the Riot Act had been made and the hour had elapsed; Lewis was charged upon the coroner's inquisition with the offence of manslaughter in respect of the death of Morris, and TINDAL, C.J., in his charge to the grand jury in *The Bristol Riots* (1832), 3 St. Tr. (N.S.) at p. 10; 5 C. & P. 261, thus referred to the case:

"The nature of the offence committed by Lewis will not, however, depend so much upon the fact that the pistol was not

(*d*) See also the Featherstone Report, *post*.

aimed at the lad, as upon the circumstances under which the pistol was originally discharged. If the firing of the pistol was a rash act, uncalled for by the occasion, or if it was discharged negligently and carelessly, the offence would amount to manslaughter; but if it was discharged in the fair and honest execution of his duty in endeavouring to disperse the mob, by reason of their resisting, the act of firing the pistol was then an act justified by the occasion, under the Riot Act before referred to, and the killing of the boy would then amount to accidental death only, and not to the offence of manslaughter."

No further mention of the case appears, and the inference is that the grand jury rejected the bill for manslaughter presented to them, and no further proceedings were taken upon the coroner's inquisition (*e*). It will be noticed here that the character of the particular assembly with which Morris was identified was felonious.

The question as to the justification of troops for firing upon rioters arose in connection with the disturbances on September 7th, 1893, at the Ackton Hall Colliery at Featherstone. Disturbances having taken place at the colliery, the military were sent for, and twenty-eight soldiers, under the command of Captain Barker, arrived at the colliery during the afternoon. There was serious rioting, the troops were very severely stoned, and several heaps of timber in the colliery were set on fire. After considerable delay a magistrate was found, and the proclamation from the Riot Act was read a little after eight o'clock at night, but the situation appeared

(*e*) In a case in Ireland, known as the *Six Mile Bridge Case*, soldiers were indicted for murder in shooting without orders from their superior officers, but in defence of their own lives, members of a mob, who were attacking them while acting as an escort during elections in County Clare. The charge of PERRIN, J., to the grand jury, who eventually threw out the bills, and the observations of the Attorney-General in offering no evidence to the court upon the coroner's inquisitions for murder, are reported in the Times Newspaper, February 25th and 27th, 1853.

so critical that the magistrate, before the expiration of an hour from the reading of the proclamation, gave Captain Barker written orders to fire. The soldiers fired two volleys, ten shots in all. Several persons were wounded, and two persons who were merely spectators were killed by shots fired in the second volley. A committee, consisting of the Right Honourable Lord Bowen, Sir Albert K. Rollit and R. B. Haldane, Q.C., was appointed to inquire into the circumstances connected with these disturbances, and in their report (*f*), wherein they found that the action of the troops was necessary and was justified by law, and that the firing was done with all ordinary skill and caution so as to do no more harm than could be reasonably avoided, they say :

"We pass next to the all important question whether the conduct of the troops in firing on the crowd was justifiable ; and it becomes essential for the sake of clearness to state succinctly what the law is which bears upon the subject. By the law of this country every one is bound to aid in the suppression of riotous assemblages. The degree of force, however, which may lawfully be used in their suppression depends on the nature of each riot, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be attained.

"The taking of life can only be justified by the necessity for protecting persons or property against various forms of violent crime, or by the necessity of dispersing a riotous crowd which is dangerous unless dispersed, or in the case of persons whose conduct has become felonious through disobedience to the provisions of the Riot Act, and who resist the attempt to disperse or apprehend them. The riotous crowd at the Ackton Hall Colliery was one whose danger consisted in its manifest design violently to set fire and do serious damage to the colliery property, and in pursuit of that object to assault those upon the colliery premises. It was a crowd accordingly which

(*f*) Page 9 of Report of Featherstone Inquiry Committee, printed by Eyre & Spottiswoode. And see The Times, December 8th, 1893.

threatened serious outrage, amounting to felony, to property and persons, and it became the duty of all peaceable subjects to assist in preventing this. The necessary prevention of such outrage on person and property justifies the guardians of the peace in the employment against a riotous crowd of even deadly weapons.

"Officers and soldiers are under no special privileges and subject to no special responsibilities as regards this principle of the law. A soldier for the purpose of establishing civil order is only a citizen armed in a particular manner. He cannot because he is a soldier excuse himself if without necessity he takes human life. The duty of magistrates and peace officers to summon or to abstain from summoning the assistance of the military depends in like manner on the necessities of the case. A soldier can only act by using his arms. The weapons he carries are deadly. They cannot be employed at all without danger to life and limb, and in these days of improved rifles and perfected ammunition, without some risk of injuring distant and possibly innocent bystanders. To call for assistance against rioters from those who can only interpose under such grave conditions ought, of course, to be the last expedient of the civil authorities. But when the call for help is made, and a necessity for assistance from the military has arisen, to refuse such assistance is in law a misdemeanor.

"The whole action of the military when once called in ought, from first to last, to be based on the principle of doing, and doing without fear, that which is absolutely necessary to prevent serious crime, and of exercising all care and skill with regard to what is done. No set of rules exists which governs every instance or defines beforehand every contingency that may arise. One salutary practice is that a magistrate should accompany the troops. The presence of a magistrate on such occasions, although not a legal obligation, is a matter of the highest importance. The military come, it may be, from a distance. They know nothing, probably, of the locality, or of the special circumstances. They find themselves introduced suddenly on a field of action, and they need the counsel of the local justice, who is presumably familiar with the details of the case. But, although the magistrate's presence is of the highest value and moment, his absence does not alter the duty of the soldier, nor ought it to paralyse his conduct, but only to render him doubly careful as to the proper steps to be taken. No officer is justified by English law in standing by and allowing felonious outrage to be committed merely because of a magistrate's absence.

"The question whether, on any occasion, the moment has come for firing upon a mob of rioters, depends, as we have said, on the necessities of the case. Such firing, to be lawful, must, in the case of a riot like the present, be necessary to stop or prevent such serious and violent crime as we have alluded to; and it must be conducted without recklessness or negligence. When the need is clear, the soldier's duty is to fire with all reasonable caution, so as to produce no further injury than what is absolutely wanted for the purpose of protecting person and property. An order from the magistrate who is present is required by military regulations, and wisdom and discretion are entirely in favour of the observance of such a practice. But the order of the magistrate has at law no legal effect. Its presence does not justify the firing if the magistrate is wrong. Its absence does not excuse the officer for declining to fire when the necessity exists.

"With the above doctrines of English law the Riot Act does not interfere. Its effect is only to make the failure of a crowd to disperse for a whole hour after the proclamation has been read a felony; and on this ground to afford a statutory justification for dispersing a felonious assemblage, even at the risk of taking life. In the case of the Ackton Hall Colliery, an hour had not elapsed after what is popularly called the reading of the Riot Act, before the military fired. No justification for their firing can therefore be rested on the provisions of the Riot Act itself, the further consideration of which may indeed be here dismissed from the case. But the fact that an hour had not expired since its reading did not incapacitate the troops from acting when outrage had to be prevented. All their common law duty as citizens and soldiers remained in full force. The justification of Captain Barker and his men must stand or fall entirely by the common law. Was what they did necessary, and no more than was necessary, to put a stop to or prevent felonious crime? In doing it did they exercise all ordinary skill and caution, so as to do no more harm than could be reasonably avoided?

"If these two conditions are made out, the fact that innocent people have suffered does not involve the troops in legal responsibility. A guilty ringleader who under such conditions is shot dead, dies by justifiable homicide. An innocent person killed under such conditions, where no negligence has occurred, dies by an accidental death. The legal reason is not that the innocent person has to thank himself for what has happened, for it is conceivable (though not often likely) that he may have been unconscious of any danger and innocent of all imprudence.

The reason is that the soldier who fired has done nothing except what was his strict legal duty."

There is no doubt that a person lawfully engaged in trying to apprehend a rioter is justified in using any degree of force to protect himself or to overcome resistance. It is, however, sometimes impracticable to attempt the apprehension of individuals without using means calculated to occasion bloodshed, and the firing on a mob (which is what using deadly weapons practically means) should be resorted to only by the necessity of self-protection, or by the circumstances of the force at the disposal of the authorities being so small that the commission of some felonious outrage cannot otherwise be prevented. In cases of riots "which savour of rebellion," the use of arms may be resorted to as soon as the intention of the insurgents to carry out their purposes by force is shown by open acts of violence, and it becomes necessary to take immediate action. It would be imprudent to use an armed force against a mob until the proclamation under the Riot Act has been made and the hour elapsed, except in circumstances when either the proclamation cannot be made owing to the violence of the mob or the mob perpetrate, or are evidently about to perpetrate, some felonious outrage. But even then deadly weapons ought not to be employed against the rioters, unless they are themselves armed or are in a position to inflict grievous injury on the persons endeavouring to disperse them, or they are committing, or about to commit, some felonious outrage which can only be stopped by an armed force. The existence of an armed insurrection would justify the use of any

degree of armed force necessary to effectually meet and cope with the insurrection (*g*).

The organisation of the military prevents their being conveniently employed in using moderate force for the purpose of dispersing or apprehending rioters without doing them injury, and, as a general rule, their action involves the risk of inflicting death or grievous bodily harm. Soldiers, therefore, should not be required to act, except where the necessity of the case demands their interference. This will practically confine their interference to cases in which violent crimes are being, or are likely to be, committed, and to insurrections in which an intention is clearly apparent to execute some general political purpose.

Share of Responsibility with Magistracy.

Where the military act in co-operation with the civil authorities the question arises upon whom the responsibility of so acting rests. The duty of preserving peace and order rests primarily with the civil magistracy. An officer, therefore, in all cases where it is practicable, should place himself under the orders of the magistrate. On the other hand, however, an officer will not perform his duty who from fear of responsibility stands by and allows outrages to be committed which it is in his power to prevent, merely on the ground that there is no magistrate present to give orders to the military. If the officer and the magistrate are acting together, the obligation lies on the magistrate to give orders, and an

(*g*) By s. 190 (20) of the Army Act, 1881, "the expression 'enemy' includes all armed mutineers, armed rebels, armed rioters, and pirates."

officer would incur serious responsibility by firing without his orders, or refusing to fire in pursuance of his orders. Still the law is that a man obeys an illegal order at his own risk, and circumstances might arise in which the officer would be justified in refusing to obey the orders of the magistrate. The magistrate, if he acts with discretion, will necessarily defer in military matters to the officer, and if in opposition to the opinion of the military authorities he were to give them orders to fire upon a mob, he would, as was said in *R.* v. *Pinney* (1832), 3 St. Tr. (N.S.) 11 : 5 C. & P. 273, have great difficulty in case death ensues in defending himself, should he be indicted for manslaughter.

On the question of the liability of military for illegal acts, see *Grant* v. *Gould* (1792), 2 H. Bl. 69 ; *Johnstone* v. *Sutton* (1786), 1 T. R. 528 ; *Bailey* v. *Warden* (1815), 4 M. & S. 400 ; *Frye's Case* (1746), in M'Arthur on Courts-Martial, Vol. I., p. 436 ; *Redford* v. *Birley* (1822), 1 St. Tr. (N.S.) 1071 ; 3 Stark. 76 ; and the Featherstone Report, *ante*. It will be seen from these and other cases collected in the Law Review, No. 15, pp. 17—62, that unjust treatment under the form of discipline, cruelty, and unnecessary severity, an undue assumption of authority not within the scope of military discipline, the infliction of an illegal sentence pronounced by a court-martial, want of probable cause in a prosecution before a court-martial, are causes of action against a superior officer. In Burnett on the Criminal Law of Scotland, pp. 71—85, there are many cases in which the question of liability of the military has arisen, and from which he deduces the general rule that a soldier's privilege, whether acting in the more immediate discharge of his duty as a soldier, or in aid

and protection of the civil magistrate, stands higher than that of an ordinary officer of the law; so as a lesser degree of resistance or hazard of being driven from his post, and compelled to abandon his duty, will justify him in using or giving orders to others to use those arms with which he is intrusted, even to the killing such as invade or assail him, or those under his command. This at least, he adds, seems to be established by the later cases of this kind that have occurred. But see 9 L. Mag. 66, and *cf.* the Featherstone Report, *ante*. The Draft Code of 1879, ss. 51, 53, thus expresses the position of the military in obeying the orders of the magistracy or their superior officers:

Section 51.—"Every one, whether subject to military law or not, acting in good faith in obedience to orders given by every sheriff, under-sheriff, mayor, bailiff, or other head officer of every county, city, town, or district, and every magistrate and justice of the peace for the suppression of riot is justified in obeying orders so given, unless such orders are manifestly unlawful; and he is protected from criminal responsibility for using such force as he, on reasonable and probable grounds, believes to be necessary for carrying such orders into effect. It shall be a question of law whether any particular order is manifestly unlawful or not."

Section 53.—"Every one who is bound by military law to obey the lawful commands of his superior officer is justified in obeying any command given to him by his superior officer for the suppression of riot, unless such order is manifestly unlawful."

See the observations as to this matter of Willes, J., in *Keighley* v. *Bell* (1866), 4 F. & F. 763, at pp. 790, 805.

In the case of *R.* v. *Glamorgan County Council*, [1899] 2 Q. B. 536; 68 L. J. Q. B. 1047, the Divisional Court and the Court of Appeal held that no

duty was imposed by law on those who administered the county funds to pay the expenses of the maintenance of the troops brought into a county, on the application of the county magistrates, for the purpose of suppressing riots and preserving peace and order in the county. Certain tradesmen had by agreement with the magistrates supplied the troops with board and lodging, and they applied for a *mandamus* to the county council to pay for such board and lodging (*h*).

DUTIES OF MAGISTRATES.

Magistrates, by the very words of their commission, "assigned to keep the peace," have on every occasion of public disturbance duties of the most difficult nature to perform. Activity, courage, and firmness must be governed by the nicest discretion. Neither good feeling nor good intention will free them from criminal responsibility if they fail either from fear or ignorance, and yet they ought not to invest every petty disturbance or constitutional expression of grievances with the character of a riot, or collect a force out of all proportion to the occasion.

The duties of the magistrates and their legal position in ordering forcible suppression of a riot is thus defined in the Draft Code of 1879:

Section 50.—"Every sheriff, under-sheriff, mayor, bailiff, or other head officer of every county, city, town, or district, and every magistrate and justice of the peace is justified in using and ordering to be used, and every peace officer is justified in using such force as he in good faith and on reasonable and

(*h*) See also 1 Burn's Justice of the Peace, 1340; Clode's Military Forces of the Crown, Vol. 11, p. 142; and The Local Government Act, 1888, s. 3.

probable grounds believes to be necessary to suppress a riot, and as is not disproportioned to the danger which he, on such grounds, believes to be apprehended from a continuance of the riot."

It should, first of all, be here mentioned, that magistrates have all the powers of individuals to suppress riotous gatherings, and everything which has been previously said as to the duties, not only of private individuals, but also of peace officers, will apply equally to justices of the peace.

Justices of the peace of counties are by their commissions assigned:

"To keep our peace in our county, and to keep and cause to be kept all the ordinances and statutes for the good of our peace and for the preservation of the same, and for the quiet rule and government of our people, made in all and singular their articles in our said county (as well within liberties as without), according to the form and effect of the same."

The commission of the peace for boroughs is in effect the same as that for counties.

By statute 34 Edw. 3, c. 1:

Justices of the peace "shall have power to restrain offenders rioters, and all other barrators, and to pursue, arrest, take, and chastise them according to their trespass or offence, and to cause them to be imprisoned and duly punished."

This statute has been liberally construed for the advancement of justice, for it hath been resolved that if a justice find persons riotously assembled, he alone, without staying for his companions, hath not only power to arrest the offenders and bind them to their good behaviour, or imprison them if they do not offer good bail, but that he may also authorise others to arrest them by a bare parol command without other

warrant, and that by force thereof those so commanded may pursue and arrest the offenders in his absence as well as presence. Also it is said that after a riot or affray is over, any one justice of the peace may send his warrant to arrest any person who was concerned in it, and also that he may send him to gaol till he shall find sureties for his good behaviour (*i*).

Justices of the peace have authority, under the statute above mentioned, and under 17 Rich. 2, c. 8, to raise the power of the county to suppress a riot (*j*). Further powers are given to any two magistrates by 13 Hen. 4, c. 7, and 2 Hen. 5, c. 8, of recording a riot, and thereby convicting the persons concerned therein. These statutes are very fully dealt with by Hawkins (*k*), in his Pleas of the Crown, together with other statutes relating to the duties of justices in respect of riots; but the practical importance of them has so long ceased to exist that further reference to them appears unnecessary. The persons upon whom the obligation rests to obey the magistracy when calling out the power of the county are enumerated in 1 Hawk. P. C., c. 65, s. 20.

The swearing in of special constables has been previously mentioned (*l*), and the substitution of special constables for the *posse comitatus* makes any further description of the latter superfluous. One point, however, may be noticed in connection with the *posse comitatus*, and that is, that no deposition upon oath is necessary before the justice of the peace collects the

(*i*) 1 Hawk. P. C., c. 65, s. 16.

(*j*) 1 Hawk. P. C., c. 65, ss. 15—55.

(*k*) See 1 Hawk. P. C. c. 65, s. 18. What amounts to a calling out of the *posse comitatus* was explained in *R.* v. *Pinney* (1832), 5 C. & P. 276.

(*l*) *Ante*, p. 133.

power of the county, such as is required before special constables can be sworn in (*m*).

The duties and powers of magistrates under the Riot Act have been previously pointed out.

"It seems to us that there ought to be in each petty sessional division, especially in time of possible disturbance, some magisterial rota or committee, and that one or more experienced justices should always hold themselves ready to act in their magisterial capacity, and to accompany, if necessary, any troops which are called upon in aid of the civil power. Indeed, when matters are so grave as to render military intervention probably necessary, there should be the most complete organisation of the justices and of the civil power" (*n*).

It remains to notice several decided cases of the greatest importance to justices, and in which their conduct as magistrates on occasions of rioting passed under the criticisms of the courts of law.

"A person, whether a magistrate or a peace officer, who has the duty of suppressing a riot, is placed in a very difficult situation, for if by his acts he causes death, he is liable to be indicted for murder or manslaughter; and if he does not act he is liable to an indictment or an information for neglect; he is therefore bound to hit the precise line of his duty, and how difficult it is to hit that precise line will be matter for your consideration, but that, difficult as it may be, he is bound to do. Whether a man has sought a public situation, as is often the case of mayors and magistrates, or whether as a peace officer he has been compelled to take the office he holds, the same rule applies, and if persons were not compelled to act according to law there would be an end of society" (*o*).

But when acting in the suppression of riots and tumults magistrates may feel "well assured that

(*m*) See *R.* v. *Pinney* (1832), 3 B. & Ad. 960; 5 C. & P. 273; 3 St. Tr. (N.S.) 11.

(*n*) Report of the Committee, Lord Bowen, Sir Albert K. Rollit and R. B. Haldane, Q.C., on the Featherstone disturbances on Sept. 7th, 1893.

(*o*) *Per* LITTLEDALE, J., in *R.* v. *Pinney*, *ubi supra*.

whatever is done by them in the execution of that object will be supported and justified by the common law."

One of the earliest of the cases in which the conduct of a magistrate in a case of riot was considered is *R.* v. *Kennett* (1781), 5 C. & P. 282 n., which arose out of the Lord George Gordon Riots of 1780 previously mentioned (*p*), and in which the defendant, the then Lord Mayor of London, was most justly convicted of wilful and culpable neglect of his duty (*q*) in not endeavouring to restrain and suppress the rioters, or to exercise the powers in that respect which he as a magistrate possessed, and in not making the proclamation under the Riot Act, and in not ordering the troops assembled in the city to quell the rioters by force.

Lord MANSFIELD, before whom he was tried, in summing up the case to the jury said:

"The common law and several statutes have invested justices with great powers to quell riots, because if not suppressed they tend to endanger the constitution of the country; and as they may assemble all the King's subjects it is clear they may call in the soldiers who are subjects and may act as such; but this should be done with great caution. . . . In law to say 'I was afraid' is not an excuse for a magistrate; it must be a fear arising from danger, which is reduced to a maxim in law to be such danger as would affect a firm man. If he did what a firm and constant man would have done he must be acquitted. If rather than apprehend the rioters his sole care was for himself, this is neglect. The sole question is, under all the circumstances of the case—Has the defendant laid before you the justification of a man of ordinary firmness?"

The result of this case is to establish that not to read the proclamation under the Riot Act, nor restrain,

(*p*) *Ante*, pp. 151 *et seq.*

(*q*) One fact proved against Kennett was that he begged the mob "not to do more mischief than was necessary." He was fined £1,000. (3 Stark. 108; 1 St. Tr. (N.S.) 1219).

nor apprehend the rioters, nor give any order to fire on them, nor make use of a military force under his command, is strong *primâ facie* evidence of criminal neglect of duty in a magistrate (*r*).

The next important case is that of *R.* v. *Pinney* (*s*), who was mayor of Bristol during the great riots in that city in October, 1831. The prosecution was commenced by an information filed by the Attorney-General, charging Mr. Pinney with general neglect of duty on the occasion of the riots from the 29th to 31st of October, and the trial took place at Bar, before a jury from the county of Berks, and resulted in the acquittal of the defendant.

LITTLEDALE, J., who summed up the case to the jury, dealt fully with the duties of magistrates in suppressing riots, and laid down several principles of law which are of great importance in guiding magistrates in a proper discharge of their duties under such circumstances. The general rules of law require of magistrates at the time of a riot that they should keep the peace and restrain the rioters, and pursue and take them; and to enable them to do this they may call on all the King's

(*r*) It is interesting to note that the criminal neglect and supineness of Mr. Kennett has been, perhaps with good reason, ascribed to the prosecution for murder instituted against Mr. Gilham, an energetic magistrate of Surrey, for giving an order to the guards to fire on and disperse a mob collected in St. George's Fields in 1768, under which order five or six persons were killed. "Such a precedent could not but tend in a similar emergency to enfeeble the civil power." (Adolphus' Hist. of England, Vol. I., p. 517). One of the soldiers was also tried for murder, but acquitted, and these prosecutions gave rise to the remark of Dr. Johnson: "The magistrates dare not call the guards for fear of being hanged, and the guards will not come for fear of being given over to the blind rage of popular juries." It has been suggested that Kennett, who was a staunch Protestant, deliberately held his hand and viewed the destruction of the dwellings of Catholics with placid acquiescence (2 Townsend's Mod. St. Tr., p. 282).

(*s*) (1832), 5 C. & P. 254; 3 St. Tr. (N.S.) 11.

subjects to assist them ; and all the King's subjects are bound to do so upon reasonable warning. It was proved in the case that 300 special constables had been appointed on the 28th, such number being then considered sufficient, and that the defendant on the 30th (Sunday) sent to the churchwardens of the various churches in Bristol notices which were read to the assembled congregations, and by which the inhabitants were required to assemble and attend the mayor's orders at the Guildhall. LITTLEDALE, J., clearly approved of this step as being proper under all the circumstances. It was also said by the court that in point of law a magistrate would be justified in giving firearms to those who came to assist him, but that it would be very imprudent in him to do so. Further, that it was no part of his duty to go out and head the constables, that is for the chief constable to do ; neither is it any part of his duty to marshal or arrange them, nor to hire men to assist him in putting down a riot, nor to keep a body of men to act as a reserve force and as occasion might require ; nor to give any orders in respect of the firearms in the gunsmiths' shops. Nor is a magistrate bound to ride with the military, and indeed it might in some cases be improper for him so to do ; if he gives the military written or verbal orders to act, that is all that is required of him (*t*). All that a magistrate is bound to do is to give the people reasonable warning to come out and assist him in quelling the riot, and to make the best use of them when they are assembled.

"Mere good feeling, however, and upright intention in a magistrate, will be no defence, if he has been guilty of a neglect

(*t*) But see remarks of the Featherstone Commission, *ante*.

of his duty, nor that in acting as he did he acted under the advice of others. The question in cases of prosecutions for neglect of duty by magistrates under such circumstances is whether the magistrate did all that he knew was in his power to do, and which could be expected from a man of ordinary and reasonable prudence, firmness, and activity."

It was said, on the part of the prosecution, that there was no plan proposed by the mayor or magistrates; that no magistrates were present to receive those who came to assist them; and that, at the demolition of the prisons and the palace, etc. there was sufficient force to repel the rioters. No doubt that is a sufficient *primâ facie* case to call on the defendant for an answer.

It was further alleged that there was want of energy in the conduct of the defendant in not ordering the military to fire upon the rioters; but it appeared that he was intending to do so, but abstained, and as it was held advisedly abstained, upon the advice of the officers commanding the troops (*u*).

It was also held that on the trial of a magistrate for neglect of duty, he ought not to be found guilty unless all the jury were satisfied that he was guilty of the same act of neglect, and "if four jurors think him guilty of one act of neglect, and eight think him guilty of another act of neglect, that is not sufficient to warrant a verdict of guilty."

The liability which rests upon a magistrate on occasions such as these has been stated by CHARLES, J., in *R.* v. *Graham and Burns* (1888), 16 Cox C. C. 420, to the effect that if a magistrate (in that case the Chief Commissioner of Police in the Metropolis), who is responsible for order in the district over which he has

(*u*) See *ante*, p. 168.

control, lazily or negligently or stupidly does not take the necessary steps to preserve order, he can stand in a criminal court to answer for his neglect of duty. A magistrate cannot be too careful in the steps he takes, provided they are reasonable steps for the preservation of life and property.

Magistrates should also remember that prompt and early interference on their part is of the greatest importance.

"It is far better and far more humane, far wiser and more politic to stay these things in their early stages, and that individuals should be stopped before they proceed to outrage and violence."

It appears to be clear that an unlawful assembly may be dispersed although it has committed no act of violence, but the question of what amount of force may properly be used to effect such dispersion is a difficult one, and one depending very much upon the circumstances of each particular case. If the assembly is verging on a riot, and the demeanor of those present shows that they are bent on serious mischief, it may be the bounden duty of the magistrates to take immediate steps to disperse the assembly and arrest the leaders, even using force if necessary (*x*). If, on the other hand, the assembly is unlawful in a slight degree only, and there is no immediate apprehension of violence, it can scarcely be justifiable to attempt to disperse it by force, or wise, as a rule, to display force.

If resort be had to force, the law is that only such force as is necessary or sufficient to effect the dispersion of the assembly may be used. Many circumstances

(*x*) See *R.* v. *Neale* (1839), 9 C. & P. 431.

may suggest themselves to magistrates affording some assistance in determining whether and what force should be used. For instance, the purpose for which the mob has come together usually furnishes a clue to a determination of the time and mode in which forcible interference should take place (*y*). For instance, a mob assembles for the purpose of pulling down an illegal obstacle to a footpath. Their proceedings may be disorderly, but there is a strong probability that as soon as their object is effected they will disperse. In such a case no force should be used, but merely precautions taken against any long continuance of the riot, and for identifying those who take part in it. But, supposing the mob assemble to destroy a cotton mill, and provide themselves with the necessary implements for breaking open the doors, and showing a determination to effect their object, in such a case the proclamation under the Riot Act should be read, and measures at once taken to arrest the leaders of the mob, and in case of the civil power being unequal to cope with the mob and to suppress the riot, the military should be summoned to assist. Another instance may be mentioned. A meeting assembles in procession with a view to discuss political objects, but no clear intention manifested to enforce by violence the object which such assembly has in view. Excitement may result in outrage, but such a meeting, so long as it commits no open acts of violence, should be interfered with as little as possible, and no exhibition of force, nor attempt to overwhelm and disperse the meeting, should take place till some violence has occurred or manifestly will occur.

(*y*) See the cases of *R.* v. *Hunt*, and *Redford* v. *Birley*; *R.* v. *Frost*, *R.* v. *Burns and Others*, and *R.* v. *Graham*, *supra*.

The dispersing of an unlawful assembly and the duties of magistrates in connection therewith was thus discussed by LITTLEDALE, J., in *R.* v. *Neale* and *R.* v. *Howell* (1839), 3 St. Tr. (N.S.) 1087; 9 C. & P. 431, cases arising out of the Bull Ring Riots at Birmingham in 1839:

"It is not only lawful for magistrates to disperse an unlawful assembly, even when no riot has occurred, but if they do not do so, and are guilty of criminal negligence in not putting down any unlawful assembly, they are liable to be prosecuted for a breach of their duty as magistrates. The mode of dispersing an unlawful assembly may be very different according to the circumstances attending it in each particular case, and an unlawful assembly may be so far verging towards a riot that it may be the bounden duty of justices to take immediate steps to disperse the assembly, and there may be cases where the magistrates will be bound to use force to disperse an unlawful assembly" (*z*).

The power of a justice of the peace to disperse an unlawful assembly, or an assembly from which a breach of the peace may reasonably be expected to result, was discussed in the Court of Appeal in Ireland, in *O'Kelly* v. *Harvey* (1883), 15 Cox C. C. 435. The plaintiff had brought an action against the defendant, who was a justice of the peace, for an assault, and in his defence the defendant set out certain inflammatory placards, giving notice of a land league meeting at B., for December 7th, and an opposition notice, posted by the Orangemen of B., calling upon them to "assemble in thousands at B., and give P. and his associates a warm reception," and further set out that informations had been sworn before him alleging that

(*z*) See a letter from Lord Eldon to Sir W. Scott (August, 1819), noticed in *R.* v. *Hunt* (1820), 1 St. Tr. (N.S.) 424.

if the land league meeting were so held at B. the peace would be broken. The meeting was held at B., and the plaintiff attended it. The defendant, having reasonable grounds for believing that the peace would be broken if the land league meeting were permitted, and that the peace could only be preserved by separating and dispersing those assembled, requested the plaintiff and others to disperse, and on their refusal, placed his hand upon the plaintiff in order to disperse the meeting, and this was the assault complained of. The Lord Chancellor, in delivering the judgment of the Court of Appeal, said:

"The defence positively states that the defendant, being a justice of the peace and present, believed, and had reasonable grounds for believing, that the peace would not otherwise be preserved than by separating and dispersing the plaintiff's land league meeting, and justifies his action upon that ground. The question then seems to be reduced to this: Assuming the plaintiff and others assembled with him to be doing nothing unlawful, but yet that there were reasonable grounds for the defendant believing, as he did, that there would be a breach of the peace if they continued so assembled, and that there was no other way in which the breach of the peace could be avoided but by stopping and dispersing the plaintiff's meeting, was the defendant justified in taking the necessary steps to stop and disperse it? In my opinion he was so justified under the peculiar circumstances stated in the defence, and which must be taken for the present as admitted to be there truly stated. Under such circumstances the defendant was not to defer action until a breach of the peace had actually been committed. His paramount duty was to preserve the peace unbroken, and that by whatever means were available for the purpose. Furthermore, the duty of a justice being to preserve the peace unbroken, he is, of course, entitled and, in fact, bound to intervene the moment he has reasonable apprehensions of a breach of the peace being imminent, and therefore he must in such cases necessarily act on his own reasonable *bonâ fide* belief as to what is likely to occur."

The court in thus holding followed the very similar case of *Humphries* v. *Connor* (1864), 17 Ir. C. L. R. 1.

POWER OF JUSTICES TO BIND TO GOOD BEHAVIOUR BEFORE ANY OFFENCE COMMITTED.

All are aware of the right possessed by individuals when under fear of personal violence to swear the peace, as it is called, against the person who has threatened such violence, that is, to cause him to be bound over to keep the peace and to find sureties for his good conduct. Justices may also of their own motion require such security without application from the individual threatened. But beyond this they have the power to bind persons suspected of an intended breach of the peace to their good "abearance," or good behaviour, and they would be justified in issuing their warrant to bring the party before them for the purpose of giving due and sufficient bail. This power rests upon 1 Edw. 3, st. 2, c. 16, and 34 Edw. 3, c. 1, and the commission of the peace founded upon those statutes under which justices are appointed (*a*).

It is not only justices of the peace or magistrates in the usual acceptation of the terms who are so empowered; the judges of the King's Bench have an original jurisdiction independently of the statute (34 Edw. 3, c. 1) to require sureties for good behaviour from persons whose acts or language are likely to endanger the public peace (*b*).

The first statute appointed the justices in general terms to be conservators of the peace; upon which ABBOTT, C.J., observed in *Willes* v. *Bridger* (1819),

(*a*) See *per* FITZGERALD, J., in *R.* v. *Cork JJ.* (1882), 15 Cox C. C. 154.

(*b*) *Ex parte Seymour* v. *Daritt* (1883), 15 Cox C. C. 242; *R.* v. *Mallinson* (1851), 16 Q. B. 367.

2 Barn. & Ald. 287: "The power to keep the peace seems necessarily to imply an authority to take surety from persons who have manifested an intention to break it." But the words of 34 Edw. 3, c. 1, are more explicit. The justices are to have power—

"To restrain the offenders, rioters, and all other barrators, and to pursue, arrest, . . . and to take and arrest all those that they may find by indictment, or by suspicion, and to put them in prison; and to take of all them that be not of good fame where they shall be found, sufficient surety and mainprize of their good behaviour towards the King and his people, and the other duly to punish; to the intent that the people be not by such rioters or rebels troubled nor endamaged, nor the peace blemished, nor merchants nor other passing by the highways of the realm disturbed, nor put in the peril which may happen of such offenders."

The words of the Commission are—

"We have assigned you jointly and severally and every one of you, our justices, to keep our peace, and to cause to come before you, or any one of you, all those who to any one or more of our people concerning their bodies, or the firing their houses, have used threats; to find sufficient security for the peace or their good behaviour towards us and our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept."

There are three classes of persons contemplated—those against whom an indictment has been found, those who are suspected of having committed an indictable offence, and lastly, those that be defamed and justly suspected that they intend to break the peace. It was clearly settled in *Butt* v. *Conant* (1820), 1 Brod. & B. 548—602, that a justice can issue his warrant to apprehend a person charged with publishing a libel, or even with having spoken seditious words, in order to take from him sureties to appear to an

indictment, and sureties for good behaviour might also be required. See also *Haylock* v. *Sparke* (1853), 17 J. P. 272 : 22 L. J. M. C. 67 ; 17 Jur. 731.

The powers given by the above-mentioned statute would seem to be more properly exercised by two justices of the peace, although under the commission one justice could act alone. The common practice, however, appears to sanction the exercise of the statutory powers by a single justice (5 Burn's Justice of the Peace, 761).

The procedure to be adopted by justices in exercise of the power to order sureties for the good behaviour should follow that prescribed by the Summary Jurisdiction Act, 1879, in cases of sureties of the peace. See Stone's Justices' Manual, 39th ed., pp. 1056—1059, and Summary Jurisdiction Procedure, by Douglas, 9th ed., pp. 130 *et seq.*

It should be observed that there is a distinction, though perhaps not a very marked one, between the surety of the peace and the surety for good abearance, and in Pulton De Pace, 18, it is thus stated :

"The surety of the peace is most times taken at the request of one for the preservation of the peace chiefly against one. But the surety for the good abearing is oftentimes granted at the suit of divers, and those must be men of credit, and to provide for the safety of many ; for the effect and purport thereof is that the party bound shall demean himself well in his port, behaviour, and company, and do nothing that may be the cause of breach of peace " (*c*).

No doubt the jurisdiction here given to justices is of very ancient origin, but that it may be used in many cases with most salutory results cannot be denied. In

(*c*) See also Dalt. c. 123 ; Lamb. 119 ; 4 Inst. 181 ; and 1 Hawk. P. C., c. 61, ss. 2, 3, and 4.

Ex parte Seymour v. *Daritt* (1883), 15 Cox C. C. 242 ; 12 Ir. C. L. R. 46, it was said :

"This is not a case in which musty statutes and obsolete laws are called into existence in order to abridge the liberty of the subject, and to deprive him of his constitutional right to be tried by the ordinary course of law, it is an act of prevention, and entails no hardship on those who intend, not to defy and outrage the law, but to conform to its just and reasonable requirements."

The statute has always been construed to extend to the prevention of contemplated offences. "It is not by way of punishment," said Lord HOLT, "but it is to show that when one has broke the good behaviour he is not to be trusted" (*R.* v. *Rogers* (1702), 7 Mod. 29 ; 14 Vin. Abr. 21 ; 4 Inst. 181). And in *Willes* v. *Bridger* (1819), 2 Barn. & Ald. 287, ABBOTT, C.J., said "the clause as to good behaviour is distinct from the clause relating to persons found by indictment or suspicion." The same principle applies here as in cases of direct personal danger, that the justices would be poor guardians of the public peace if they could not interfere until actual outrage. See *Rex* v. *Stanhope* (1826) 12 A. & E. 621n. Formerly, indeed, this power was exercised in many cases where now its legality might be questionable ; but an examination of the authorities, as well as the consideration of the principles of political order and government, make it tolerably clear that a manifested intention to disturb the public peace and cause riot and tumult, would be a case within the statute, and the offender might be apprehended for the purpose of taking from him sureties of good behaviour. The statute is to secure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crimes can be proved

against them or not. Many early instances may be found in which questions have arisen as to the sufficiency of mere words, tending to personal quarrels, to justify the exercise of this power; but the result seems to be that they must be something more than mere rash and quarrelsome words, and must directly tend to a breach of the peace, or to scandalise the government, or the administration of justice (1 Hawk. P. C. c. 61, s. 3).

This power of justices "is a wide judicial discretionary power to be exercised with great caution and not capriciously, and to be jealously watched over by this court" (*d*).

The discretion here referred to is a legal discretion, that is:

"An understanding to discern between truth and falsehood, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to our wills and private affections; and such discretion ought to be limited and bounded with the rules of reason, law, and justice" (*Keighley's Case* (1610), 10 Rep. 140).

So, in more recent years, Lord HALSBURY, L.C., in *Sharpe* v. *Wakefield*, [1891] A. C. 173, says:

"When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not to private opinion—according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular, and it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself."

Several instances in which this power of justices may properly be exercised are given by Hawkins (1 P. C. c. 61, s. 4), and among them is that of "raising and

(*d*) *Per* FITZGERALD, J., in *R.* v. *Cork JJ.* (1882), 15 Cox C. C. p. 155.

exciting discontents in the minds of the people" (*Rudyard's Case* (1671), 2 Vent. 22).

In 5 Burn's Justice of the Peace, p. 759, are mentioned as cases wherein sureties for good behaviour may be granted—riotous, common breakers of the peace, such as in presence of the justice shall misbehave themselves in some outrageous manner of force, abusing justices or constables in their office, and those guilty of forcible entry. So where a prize fight or duel is intended, it is clearly the duty of magistrates to apprehend the parties so intending to commit an offence, and bind them over. See *Rex* v. *Billingham* (1825), 2 Car. & P. 234; *Butt* v. *Conant* (1820), 1 Brod. & B. 590, 591.

A more recent illustration is the case of Mr. De Morgan, who in 1877 announced by placards that he intended gathering together "men stern and true" to the number of 100,000 to the House of Commons, and to crave admission for himself and others to address the Speaker, and show cause why her Majesty should reverse the conviction of the claimant to the Tichborne estates. It appeared that Mr. De Morgan had recently been convicted of riot at Plumstead. The opinion of the law officers was taken as to the advisability of summoning him before justices under 34 Edw. 3, c. 1, s. 2. The law officers advised that it was a proper case for calling upon Mr. De Morgan to find sureties for his good behaviour under that statute.

Ireland has afforded several instances in which this power of requiring sureties has been exercised.

In *R.* v. *Cork County JJ.* (1882), 15 Cox C. C. 78; 10 L. R. Ir. C. L. 1, one H. R. had incited certain tenants to pay no rent to their landlords. H. R. was summoned before justices to show cause why she should

not be bound over to be of good behaviour, and refusing to find such sureties, was imprisoned for one month. It was held that considering the state of the country at the time there was ample ground shown upon which to found the order so made.

"Preventive justice consists in obliging those persons whom there is probable ground to suspect of future misbehaviour to stipulate with and give full assurance to the public that such offence as is apprehended shall not happen by finding pledges or securities for keeping the peace or for their future good behaviour." (*e*)

In a similar case of *R.* v. *Cork JJ.* (1882), 15 Cox C. C. 149 ; 10 L. R. Ir. C. L. 294, FITZGERALD, J., said :

"Where it shall be made reasonably to appear to a justice of the peace that a person has incited others by acts or language to a violation of law and of right, and that there is reasonable ground to believe that the delinquent is likely to persevere in that course, such justice has authority in law in the execution of preventive justice, to provide for the public security by requiring the individual to give security for good behaviour, and in default commit him to prison."

Another illustration of the conduct for which sureties for good behaviour will be granted is given in *Ex parte Seymour* v. *Daritt* (1883), 15 Cox C. C. 242 ; 12 L. R. Ir. C. L. 46, where the affidavits upon which the application for sureties was granted showed that violent language had been used by D. to a large meeting held in furtherance of a combination against the payment of rent. In this case the sureties were granted, and the above-cited cases were followed and approved of by the Queen's Bench Division in Ireland, to whose original jurisdiction, under 34 Edw. 3, c. 1, the application had been made. As to the meaning of the words "them that be not of good fame" in the statute 34 Edw. 3, c. 1,

(*e*) 4 Bla. Com. c. 18, quoted by MAY, C.J., in *R.* v. *Cork JJ.*, *supra*. See also 4 Steph. Com., 14th ed., 246.

see *R.* v. *Cork JJ.* (1882), 15 Cox C. C., at p. 155, and *R.* v. *Cork County JJ.* (1882), 15 Cox C. C., at p. 84.

In putting in force the provisions of this statute, no doubt much is left to the discretion of justices: but it is well that they should recollect that they do possess this power. Interference in trivial cases would be improper; but where the cause is clear and definite, and the danger imminent, and proved by the oaths of credible persons, this power might, and indeed should be, exercised.

It was decided in *R.* v. *Cork JJ.* (1882), 15 Cox C. C. 149, that the person summoned could tender evidence to disprove the matters in respect to which he was required to find sureties, but that he was not a competent witness on his own behalf, as the hearing of such a summons was a criminal proceeding (*f*). It would seem, therefore, that the informations for sureties for good behaviour, unlike, in this respect, the rule which obtained as to informations for sureties of the peace, can be so traversed by the person summoned, and in the case above cited of *Ex parte Seymour* v. *Daritt* affidavits for this purpose were used by the defendants (see *R.* v. *Dunn* (1840), 12 A. & E. 620). And the sufficiency of the informations would be examinable on *certiorari* just as in informations of the peace.

In Dalton may be found a form of warrant stating generally that the party charged is of evil fame as a rioter, etc., but it is suggested that the warrant should specify the cause and not use mere general words. In *Rudyard's Case* (1671), 2 Vent. 22, which was a warrant grounded upon suspicion, it was held bad for not stating the grounds of suspicion. See *R.* v. *Dunn*, (1840), 12 A. & E. 614; *Caudle* v. *Seymour*,

(*f*) See now the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36).

(1841), 1 Q. B. 889; *Sir W. Bruncker's Case*, (1648), Sty. 16; *Claxton's Case*, (1701), Holt, 406. By the adoption of this rule, there would be a check upon any improper exercise of the discretionary power, while no danger would arise to true constitutional liberty by the prevention of disorder and offences by this means. A warrant to compel a person to find sureties for good behaviour may be executed on Sunday notwithstanding 29 Chas. 2, c. 7, s. 6. (*Johnson* v. *Colton*, (1678), Ray. (T.) 250).

Reasonable amount of bail should only be required, and we may mention that justices are not warranted in refusing bail, otherwise sufficient, on account of the personal character or opinions of the party proposed (*R.* v. *Badger* (1843), 4 Q. B. 468, and see *R.* v. *Butler* (1881), L. R. 8. Ir. C. L. 39, where the court refused bail, having regard to the serious nature of the offence and the probability of the bailsmen being indemnified should the defendants not appear) (*g*). A rule for a criminal information was obtained against justices for having refused bail on account of the personal opinions of the proposed party, and although it was discharged, as they appeared to have acted *bonâ fide*, and under a mistake as to their power, such excuse would not now be sufficient (*h*). The recognizances would be forfeited by any actual breaches of the peace, just as a recognizance for the peace, and also, it seems, for other matters, as for going armed, or speaking words tending to sedition (*i*).

(*g*) *Cf. Consolidated Exploration and Finance Co.* v. *Musgrave* (1900), 64 J. P. 89; *R.* v. *Stockwell* (1902), 66 J. P. 376, and the cases therein quoted as to indemnifying bail.

(*h*) *R.* v. *Badger*, *supra*.

(*i*) See, as to the causes for which such recognizance may be forfeited, 1 Hawk. P. C., c. 61, ss. 5, 6; Dalt. c. 122, and 5 Burn's Justice of the Peace, p. 763.

PART IV.

THE TREASON FELONY ACT, 1848 (*a*).
(11 VICT. c. 12.)

OBJECT OF ACT.

THE Statute of Treasons, 1351 (*b*), was passed with the intention of limiting and defining the previously indefinite offence of high treason or accroachment on the royal power; but its very simplicity led to forced and subtle interpretations, some resting on arguments of expediency and justice, and others the offspring of the most artificial reasoning, and irreconcilable with sound principles of criminal jurisprudence. But by degrees the precedents became law, and the 36 Geo. 3, c. 7 (*c*) "may be said not so much to introduce any new treasons as to declare to be substantive treason those acts which had been, by successive constructions of the statute of Edward, determined to be the strongest and most pregnant overt acts of the several treasons specified in that statute" (*d*).

The cumbrous machinery applicable to the trial of traitors, however useful as a safeguard in some

(*a*) The full title is "An Act for the better security of the Crown and Government of the United Kingdom." See The Short Titles Act, 1892.

(*b*) 25 Edw. 3, st. 5, c. 2. See Stephen's History of the Criminal Law, chap. xxiii.

(*c*) Made perpetual by 57 Geo. 3, c. 6.

(*d*) *Per* Lord ELLENBOROUGH: *R.* v. *Watson* (1817), 32 St. Tr. 579.

instances, is ill adapted to that species of treason which is personal rather than political in its nature.

Accordingly, by 39 & 40 Geo. 3, c. 93, and 5 & 6 Vict. c. 51, the "spurious dignity" of traitors is denied to those who directly attempt the life of the Sovereign, and such offenders are subjected to the ordinary mode of prosecution for murder, or, if they content themselves with acts of a minor degree of violence or annoyance, are liable to the undignified punishment of imprisonment and whipping.

Again, an altered state of circumstances has been met by an alteration of procedure; and the general aim of the present statute is to ensure the more speedy and effectual suppression of offences, treasonable in law, but in most cases practically exempt from prosecution, by declaring them to be punishable as ordinary felonies, and thus destroying one great incentive to crimes which frequently spring from a morbid love of notoriety.

The various sections of the statute are as follows:

I. This section (*e*) repealed the above-mentioned Act, 36 Geo. 3, c. 7, made perpetual by 57 Geo. 3, c. 6, and all the provisions of the last-mentioned Act in relation thereto, "save such of the same respectively as relate to the compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the heirs and successors of his said Majesty King George the Third, and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices, or intentions, or any of them."

(*e*) This section has been itself repealed by The Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), but the repeal of the Acts mentioned is not thereby affected.

II. Such of the said recited provisions made perpetual by the said Act of the fifty-seventh year of the reign of King George the Third as are not hereby repealed shall extend to and be in force in that part of the United Kingdom called Ireland.

See as to this section, *O'Brien* v. *R.* (1849), 3 Cox C. C. 360; 2 H. L. Cas. 465.

III. If any person whatsoever after the passing of this Act shall, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our most gracious lady the Queen, *her heirs or successors* (*f*), from the style, honour, or royal name of the Imperial Crown of the United Kingdom, or of any other of her Majesty's dominions and countries, or to levy war against her Majesty, *her heirs or successors* (*f*), within any part of the United Kingdom, in order by force or constraint to compel her *or them* (*f*) to change her *or their* measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both Houses or either House of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other of her Majesty's dominions or countries under the obeisance of her Majesty, *her heirs or successors* (*f*), and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, *or by open and advised speaking* (*f*), or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable . . . to be transported

(*f*) These words in italics were repealed by the Statute Law Revision Act, 1891. See the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 30, and the note to s. 4 of this Act, *post*.

beyond the seas for the term of his or her natural life, *or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the court shall direct* (*g*).

It will be noticed that the words of this section very closely follow those of s. 1 of 36 Geo. 3, c. 7. The words "or by open and advised speaking" which did not appear in the earlier statute being now repealed.

It would be impossible within any moderate limits to inquire fully into the meaning of these general phrases, but it may be stated generally that any attempt by a large body of people with force and violence, or show and threat of force and violence, to supersede and destroy the authority of the Crown, or to coerce the political government into a change of measures, would be within the statute, and that to constitute the offence it will be immaterial whether the personal restraint of the Sovereign be among the objects of the offenders. The distinction between local disturbances and treasonable outbreaks has already been noticed, *supra*, p. 29 ; but it may be observed that it is not incumbent on the prisoner to show what was the object and meaning of the acts done, but it is the duty of the prosecutors to make out their case. See *R.* v. *Deasy* (1883), 15 Cox C. C. 342.

Thus in *Frost's Case* (1839), 4 St. Tr. (N.S.) 86 ; 9 C. & P. 129, it was essential to satisfy the jury that the intention of the armed force was to take the town or attack the military, and not merely to make a demonstration of their strength to the magistracy in the hope of procuring the liberation of certain prisoners or a mitigation of their punishment.

And in the same case it was held that to constitute a levying of war against the Sovereign within the realm there must be an insurrection, a force accompanying that insurrection, and it must be for an object of a general nature. So it is high treason to attempt by intimidation and violence to compel the repeal of a law (*R.* v. *Gordon* (1781), 2 Doug. 590).

So the sending or supplying arms to be used in aid of a treasonable confederacy, having for its object the overthrow of the King's Government in any part of the United Kingdom

(*g*) These words in italics were repealed by the Statute Law Revision Act, 1892. Penal servitude is now substituted for transportation, the minimum term that may be awarded being three years. Imprisonment with or without hard labour may be awarded for any term not exceeding two years. See 20 & 21 Vict. c. 3, s. 2, and 54 & 55 Vict. c. 69.

by force of arms, is a sufficient overt act of a conspiracy to depose or deprive the King under this section. And it is not the less so because the arms are sold, and the motive of the sale is pecuniary profit, provided it is known that they are to be used in aid of insurrection. Secret storing of arms and sending them under feigned addresses to places where the confederacy is proved to exist is evidence of the offence (*R.* v. *Davitt* (1870), 11 Cox C. C. 676).

A person who becomes naturalised in a foreign country under such circumstances that, before the Naturalisation Act, 1870, he would have been guilty of treason is not relieved by the Naturalisation Act from the consequences of his act. An indictment for treason which alleged that the prisoner adhered to the enemies of the late Queen without the realm was held to be good (*R.* v. *Lynch*, [1903] 1 K. B. 444; 67 J. P. 41; 72 L. J. K. B. 167).

In *R.* v. *Gallagher* (1883), 15 Cox C. C. 291, where the facts proved the existence in America of branches of a secret society known as the Fenian Brotherhood, whose object was to procure "the freedom of Ireland by force alone," and that the prisoners, members of these clubs, came to England provided with funds, with the intention to destroy by means of nitro-glycerine and other explosives public buildings in England, and the defendants were indicted under this section for compassing, intending, and devising to deprive and depose the Queen from the style, honour, and royal name of the Imperial Crown of the United Kingdom, for levying war against her to compel her to change her counsels, and to intimidate and overawe the Houses of Parliament; it was laid down: (1) That if the jury thought that one or more of the defendants did compass, devise and intend to force the Queen to change her counsels and to overawe the Houses of Parliament by violent measures, directed either against the property of the Queen, the public property, or the lives of the Queen's subjects, and not with the view of repaying any private spite or enmity against any particular subjects of the Queen, it would be a levying of war (*h*) against the Queen within the meaning of the first count of the indictment; that it was not the less a compassing and intending to levy war, because by the progress of science two or three men could now do what could not have been done years ago except by a large body of persons; that the question was, was there proof that

(*h*) As to the meaning of "levying war," see Luders' Treatise on High Treason; *R.* v. *Dowling* (1848), 7 St. Tr. (N.S.) 382; 3 Cox C. C. 509. And see the charge of ALDERSON, B., to the grand jury at Liverpool in 1848 (6 St. Tr. (N.S.) 1129).

the prisoners did what they did with the intention to deprive and depose the Queen from the style of the Imperial Crown, or with the intention of separating Ireland from the Crown of England, and establishing a separate and independent republic. (2) That if what the prisoners did was done to compel her Majesty or her ministers by force to change the present constitution, and to alter the relations between England and Ireland, or to set up a separate Parliament in Ireland, it would be within the second count of the indictment. (3) That if what the prisoners did was done for the purpose of intimidating or overawing both or either Houses of Parliament, so as to frighten them into doing what they otherwise would not have done, it would be within the third count of the indictment. In *R.* v. *Hardie* (1820), 1 St. Tr. (N.S.) 609, it was held that there may be a levy of war without great numbers or military arms or array, and without actual use of force.

So also in a somewhat similar case of *R.* v. *Deasy* (1883), 15 Cox C. C. 334, where the defendants were charged under this section with compassing to deprive the Queen of the style of the Imperial Crown, with compassing to levy war against the Queen to force her to change her counsels, and with compassing to levy war against the Queen in order to intimidate the Houses of Parliament, that for the purpose of showing a treasonable object on the part of the prisoners, and negativing any private object, evidence might be given of the existence of a treasonable conspiracy in the country from which the explosives found upon the prisoners were brought, having for its object the alteration of the existing form of government by violent means, although the prisoners were not proved to be members of or directly connected with such conspiracy. See also *R.* v. *Burton and Cunningham*, May 11th — 18th, 1885, Cent. Crim. Ct. Sessions Papers, vol. cii., 88—154.

In *R.* v. *O'Doherty* (1848), 6 St. Tr. (N.S.) 831, evidence that the prisoner was the registered proprietor and publisher of a newspaper containing incitements to depose the Queen was *primâ facie* but not conclusive evidence against him of compassing to depose the Queen, and in the same case it was also held that an intent to raise a general insurrection for a general purpose would be a compassing to levy war against the Queen in order to force her to change her measures and counsels.

The expressing, uttering, declaring, or publishing by printing or writing, or by any other overt act or deed, are the modes of proof or evidence of the crime, but are yet part of the description of the offence that must be stated in the indictment.

There is no objection in law to allege in the same count several and different overt acts of felony (s. 5, *post*, and *Mulcahy* v.

R. (1868), L. R. 3 H. L. 306), and where several overt acts are charged in the same count, and judgment is given on a general verdict of guilty on that count, such judgment will be sustained though some of the matters alleged as overt acts may be improperly so alleged, provided that the count contains allegations of overt acts that are sufficient and are sufficiently alleged (*Mulcahy* v. *R.*). It is sufficient to allege as overt acts that the defendants conspired to commit the offence charged under this section.

Overt acts Foster, J., defines as not merely evidence, but as means made use of to effectuate the purposes of the heart, and whilst admitting the insufficiency of loose words, and the extreme danger of multiplying charges upon slight occasions, he treats words as overt acts where they are in contemplation of some traitorous purpose actually on foot or intended, and in prosecution of it (*i*). This must, it is apprehended, still be the limit to a criminal charge founded upon words.

If an overt act in pursuance of the alleged treasonable design is proved to have been done within the jurisdiction in which the trial is had, evidence may be given of other acts done outside the jurisdiction in pursuance of the same design (*R.* v. *Hardie* (1820), 1 St. Tr. (N.S.) 610, and *cf. R.* v. *Oliphant*, [1905] 2 K. B. 67 ; 69 J. P. 230 : 74 L. J. K. B. 591).

It is manifest that acts most innocent in themselves may acquire a criminal character as being done towards or in the course of executing a criminal intention, as in *Lord Preston's Case* (1691), 12 How. St. Tr. 727, the embarking on board a vessel in London for the purpose of going abroad and there prosecuting a treasonable act, was held a sufficient overt act of treason. An overt act therefore is :

" Any act of conspiring or conferring, or consulting with, or advising, persuading, counselling, commanding, or inciting any person, or any other act, measures, or means whatsoever done, taken, used, or assented to, towards and for the purpose of effecting the traitorous intention or act charged " (5th Cr. Law Rep. 6, and 6th Rep. Commiss. Cr. Law, 7).

In Green's Scot. Tr. for Treason, Vol. 2, pp. 333, 661, it was said in reference to overt acts :

" An overt act and deed manifesting an intention to commit any of these species of treason need not necessarily be an act of treason in itself ; for example, suppose that there is an undoubted scheme proved or admitted to raise an insurrection or to levy war against the King for a general purpose there can

(*i*) See Fost. C. L. 200—207 ; 5th Cr. L. Rep. 5, 26 ; and *per* Lord Ellenborough : *R.* v. *Despard* (1803), 28 How. St. Tr. 487.

be nothing in the world more innocent in itself than the ringing of a bell, or the firing of a skyrocket, or the beating of a drum or anything of that sort ; but if it be proved at the same time that any of these were to be the signals of an insurrection, then these acts, perfectly innocent in themselves, if done by a person who was aware of the object of them, is an overt act of treason, that is to say, it is an overt act, intimating the treasonable purpose the man has in view." See also *R.* v. *Watson* (1817), 32 St. Tr. 5 ; *R.* v. *Duffy* (1849), 4 Cox C. C. 295.

ALDERSON, B., in referring to the words "open and advised speaking," in his charge to the grand jury at the Liverpool Assizes in 1848, said, "I take it to be perfectly clear that open and advised speaking, where it assumes the nature of advice and incitement to others, is, and always was, an overt act of high treason" (*k*).

IV. [This section provided, *inter alia*, that no person should be prosecuted for felony under this Act in respect of such compassings, etc., in so far as the same were expressed "by open and advised speaking only" unless a warrant should be issued within two years after the passing of this Act. The words therefore in s. 3, "or by open and advised speaking," had long since become inoperative, and they together with the whole of this section were repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).]

V. It shall be lawful in any indictment for any felony under this Act, to charge against the offender any number of the matters, acts, or deeds by which such compassings, imaginations, inventions, devices, or intentions as aforesaid, or any of them, shall have been expressed, uttered, or declared.

This does not render it necessary to prove more than sufficient to support the charge, as in treason one sufficient overt act need

(*k*) 6 St. Tr. (N.S.) 1129. See also 1 Hale P. C. 111, 323 ; Fost. C. L. 200 ; 1 Hawk. P. C., c. 17, s. 39 ; *Martin* v. *R.* (1848), 3 Cox C. C. 318 ; *R.* v. *Hardie*, *supra* ; and RICHARDS, B., in *R.* v. *Duffy* (1848), 1 St. Tr. (N.S.), at p. 838.

only be proved (1 Hale, P. C. 122 ; Fost. C. L. 194). It would have been well to have enacted, as was done in cases of treason by 7 & 8 Will. 3, c. 3, s. 8, that "no evidence shall be given of any overt act that is not expressly laid in the indictment." But evidence clearly would be admissible where the overt act not laid is direct proof of one which is laid, just as in treason. See *Mulcahy* v. *R.* (1868), L. R. 3 H. L. 306.

In *R.* v. *Mitchel* (1848), 6 St. Tr. (N.S.) 599 ; 3 Cox C. C. 1, the defendant was indicted for compassing to deprive the Queen from the style of the Imperial Crown, etc., and on certain days expressing such compassing by publishing writings in a newspaper of which he was the proprietor, and in another set of counts with compassing to levy war against the Crown in order to compel the Queen to change her counsels, and expressing such last-mentioned compassing by publishing the same writings in the same newspaper on the same days. It was held that these two felonies, though distinct, were properly joined in the same indictment, as they were not so repugnant or dissimilar in their nature as to embarrass the prisoner in his defence.

And in *Martin* v. *R.* (1848), 6 St. Tr. (N.S.) 925 ; 3 Cox C. C. 319, where the expressing of the felonious compassing was alleged to be by publishing certain printings in a newspaper, it was held to be unnecessary to allege that they were felonious printings, or that they were declaratory of the previously charged compassings, or that they were published of and concerning the Queen and Government, or of and concerning any traitorous or felonious design then on foot.

As to setting out the words uttered in pursuance of the alleged compassing, etc., see *R.* v. *Crowe* (1848), 3 Cox C. C. 123, and *R.* v. *Fussell* (1848), 6 St. Tr. (N.S.) 723 ; 3 Cox C. C. 291 ; and as to demurring to the indictment, *R.* v. *Duffy* (1849), 4 Cox C. C. 24, 123 ; and *R.* v. *Faderman* (1850), 4 Cox C. C. 361.

In an indictment under this statute the venue was laid as the "County of the City of Dublin," and the trial took place there. Some of the overt acts laid were conspiracies to effect the treasonable intent charged, but no overt act of the treasonable conspiracy was proved to have been personally done by the defendant within the venue, nor did he appear to have been within the realm at the time of the doing of any of the overt acts laid. But overt acts were laid and proved as done within the venue by members of a treasonable conspiracy extending over America and Ireland, of which the defendant, who was a British subject, was proved to have been an active member in America before and at the time of the commission of the overt acts

charged. It was held that there was jurisdiction in Dublin to try the prisoner, as the responsibility for the acts of his co-conspirators made their acts his acts, so as to satisfy the common law rule that the offence must be proved where the venue is laid (*R.* v. *Meaney* (1867), 10 Cox C. C. 506 ; 1 Ir. Rep. C. L. 500 ; 15 W. R. 1082. See also *R.* v. *Davitt* (1870), 11 Cox C. C. 676, and *R.* v. *Hardie* (1820), 1 St. Tr. (N.S.) 610).

VI. Provided always that nothing herein contained shall lessen the force of or in any manner affect anything enacted by the statute passed in the twenty-fifth year of King Edward the Third, *a declaration which offences shall be adjudged treason.*

VII. Provided also that if the facts or matters alleged in an indictment for any felony under this Act shall amount in law to treason, such indictment shall not by reason thereof be deemed void, erroneous, or defective ; and if the facts or matters proved on the trial of any person indicted for any felony under this Act shall amount in law to treason, such person shall not by reason thereof be entitled to be acquitted of such felony ; but no person tried for such felony shall be afterwards prosecuted for treason upon the same facts.

VIII. In the case of every felony punishable under this Act, every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this Act punishable ; and every accessory after the fact to any such felony shall, on conviction, be liable to be imprisoned, with or without hard labour, for any term not exceeding two years.

IX. Provided always that no person committed for trial in Scotland for any offence under this Act shall be entitled to insist on liberation on bail, unless with

consent of the public prosecutor, or by warrant of the High Court or Circuit Court of Justiciary, in such and the like manner and to the same effect as is provided by an Act passed in the Session of Parliament holden in the fifth and sixth years of the reign of his Majesty King George the Fourth, intituled "An Act to provide that persons accused of forgery in Scotland shall not be entitled to bail unless in certain cases"; but the trial of any person so committed, and whether liberated on bail or not, shall in all cases be proceeded with and brought to a conclusion under the like certification and conditions as if intimation to fix a Diet for trial had been made to the public prosecutor in terms of an Act passed in the Scottish Parliament in the year one thousand seven hundred and one, intituled "An Act for preventing wrongous imprisonment, and against undue delays in trials."

X. It shall not be lawful for any court before which any person shall be prosecuted or tried for any felony under this Act to order payment to the prosecutor or the witnesses of any costs which shall be incurred in preferring or prosecuting any such indictment.

PART V.

THE RIOT (DAMAGES) ACT, 1886.
(49 & 50 Vict. c. 38.)

An Act to provide Compensation for Losses by Riots.
[25th June 1886.]

Whereas by law the inhabitants of the Hundred or other area in which property is damaged by persons riotously and tumultuously assembled together are liable in certain cases to pay compensation for such damage, and it is expedient to make other provision respecting such compensation and the mode of recovering the same (*a*).

Be it therefore enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Riot (Damages) Act, 1886.

2.—(1) Where a house, shop, or building (*b*) in any police district (*b*) has been injured or destroyed, or the property therein has been injured, stolen (*c*), or destroyed,

(*a*) The preamble is repealed by the Statute Law Revision Act, 1898.

(*b*) See s. 9, *post*. In *Field* v. *Metropolitan Police Receiver*, *post*, no question arose as to the wall being a building.

(*c*) Under the statute 7 & 8 Geo. 4. c. 31, repealed by the present enactment, no compensation was payable in respect of goods stolen

by any persons riotously (*d*) and tumultuously assembled together, such compensation as herein-after mentioned shall be paid out of the police rate of such district to any person who has sustained loss by such injury, stealing, or destruction; but in fixing the amount of such compensation regard shall be had to the conduct of the said person, whether as respects the precautions taken by him or as respects his being a party or accessory to such riotous or tumultuous assembly, or as regards any provocation (*e*) offered to the persons assembled or otherwise.

(*Smith* v. *Bolton* (1816), Holt, 201; *Drake* v. *Footitt* (1881), 7 Q. B. D. 201; 45 J. P. 798; 50 L. J. M. C. 141; 45 L. T. (N.S.) 420). See extract from LINDLEY, J.'s, judgment, *ante*, p. 91.

(*d*) The persons who injure or destroy any house property, or steal any property therein, must be part of an actual riot at the time of such theft or injury. Reference must, therefore, be had to the definition of riot, and the circumstances under which a riot can be said to exist. See p. 28, *ante*, and also *Gunter* v. *Metropolitan Police Receiver*, *post*.

(*e*) In *Gunter* v. *Metropolitan Police Receiver* (1888), 53 J. P. 249; 5 T. L. R. 58, the plaintiff had appointed G. as manager of his private running ground at Lillie Bridge. G. had arranged with one Lewis to hold, and duly advertised, a running match for September 19th, 1887, to take place on the premises. Lewis agreed to provide the money-takers and check-takers, and to hire a sufficient number of constables to preserve order, applying to the superintendent of the district for and obtaining the services of twenty-seven constables. About 5,000 persons assembled to see the race, but after the two competitors had appeared and walked upon the track, they did not run, but disappeared by a back entrance. The spectators, finding no race was going to be run, and receiving no explanation, demanded a return of the gate money, which was refused; a riot ensued, and damage to the extent of £880 was done to the dressing rooms and other buildings. In an action against the Receiver, to recover such sum as compensation, it was contended for the defendant, that no compensation could be paid under this statute unless the riot occurred in a public place, and that the plaintiff through his servants had given provocation to the rioters. MATHEW, J., in giving judgment for the defendant, said that he saw no reason why the limitation as to the place where the riot occurred, contended for by the defendant, should be placed upon the statute, and that the plaintiff's contention that he was entitled to compensation, and there should only be a diminution of the amount of damage sustained, if there should be evidence of provocation, was an extremely narrow construction of the statute.

(2) Where any person having sustained such loss as aforesaid has received, by way of insurance or other-

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The conduct of G. and Lewis, who were the plaintiff's representatives, was not such as to enable him to allow the compensation claimed, no explanation was given to the crowd as to why the race would not be run, and anything more certain to enrage the crowd and cause a disturbance could hardly be imagined.

In *Field* v. *Metropolitan Police Receiver*, Times Newsp., July 30th, 1907, an appeal against a judgment under this section, for the plaintiff, for damages done to a wall, the question for the court (PHILLIMORE and BRAY, JJ.) was whether the evidence justified the county court judge's finding that there was a riot. About nine o'clock one evening, seven or eight youths were in a street shouting and using rough language, some of them standing with their backs against the wall, others running against them or against the wall, with their hands extended; after they had gone backwards and forwards in this way for about a quarter of an hour, the wall fell with "a splash." It was a nine-inch wall toothed into a house, of considerable length, and enclosing a yard. As soon as it fell the caretaker of the premises came out into the street and the youths cleared off. There was evidence that the neighbourhood was a rough one, and that doors, windows, shutters, and water and gas fittings had been at other times destroyed, and people frightened. The youths were described as "congregated together," and as appearing to be acting together. PHILLIMORE, J., in delivering judgment, stated the above facts and mentioned the authorities they had consulted, and said: "We deduce that there are five necessary elements of a riot: (1) number of persons, three at least; (2) common purpose; (3) execution or inception of the common purpose; (4) an intent to help one another by force if necessary against any person who may oppose them in the execution of their common purpose; (5) force or violence not merely used in demolishing, but displayed in such a manner as to alarm at least one person of reasonable firmness and courage. In this case, element No. 1 was present. As to elements Nos. 2 and 3, there was evidence upon which the learned judge could have found their existence, though, as far as we can judge, we think we should not have found the same way. But as to elements Nos. 4 and 5, there is no evidence. The youths ran away as soon as the single caretaker came forward; there is no reason to suppose that they would have resisted if he had come forward earlier and required them to desist. It is true that the caretaker's wife was frightened by the noise of the falling wall, but no one says that he was alarmed by the youths, though the witness may have been frightened by other youths on other occasions. Nor was the conduct of the youths such as would be calculated to alarm persons of reasonable firmness and courage. We cannot hold that there was a riot. The appeal must be allowed."

The liability of the Hundred for damage done by rioters was controlled by the 7 & 8 Geo. 4, c. 31, and existed only where the rioting was felonious (*Reid* v. *Clarke* (1798), 7 T. R. 496).

wise (*f*), any sum to recoup him, in whole or in part, for such loss, the compensation otherwise payable to him under this Act shall, if exceeding such sum, be reduced by the amount thereof, and in any other case shall not be paid to him, and the payer of such sum shall be entitled to compensation under this Act in respect of the sum so paid in like manner as if he had sustained the said loss, and any policy of insurance given by such payer shall continue in force as if he had made no such payment, and where such person was recouped as aforesaid otherwise than by payment of a sum, this enactment shall apply as if the value of such recoupment were a sum paid.

3.—(1) Claims for compensation under this Act shall be made to the police authority of the district in which the injury, stealing, or destruction took place, and such police authority shall inquire into the truth thereof, and shall, if satisfied, fix such compensation as appears to them just.

(2) A Secretary of State may from time to time make, and when made, revoke and vary regulations (*g*) respecting the time, manner, and conditions within, in, and under which claims for compensation under this Act are to be made, and all claims not made in accordance with such regulations may be excluded. Such regulations may also provide for the particulars to be stated in any claim, and for the verification of any

(*f*) It had been held under the previous statute that the receipt of money under a policy of insurance was no bar to an action against the Hundred (*Clark* v. *Blything* (1823), 2 B. & C. 254).

(*g*) See these regulations, *post*.

claim, and of any facts incidental thereto, by statutory declarations, production of books, vouchers, and documents, entry of premises, and otherwise, and may also provide for any matter which under this Act can be prescribed, and for the police authority obtaining information and assistance for determining the said claims.

(3) The said regulations shall be published in the London Gazette, and every police authority shall cause the same to be published in their police district, and copies thereof to be at all times sold to any applicant at a price not exceeding sixpence for each copy.

4.—(1) Where a claim to compensation has been made in accordance with the regulations, and the claimant is aggrieved by the refusal or failure of the police authority to fix compensation upon such claim, or by the amount of compensation fixed, he may bring an action (*h*) against the police authority to recover compensation in respect of all or any of the matters mentioned in such claim and to an amount not exceeding that mentioned therein, but if in such action he fails to recover any compensation or an amount exceeding that fixed by the police authority, he shall pay the costs of the police authority as between solicitor and client.

(2) If the amount of compensation for which such action is brought does not exceed one hundred pounds, the action shall be brought in the county court for any district in which any part of the police district is situate.

(*h*) The statute 3 & 4 Will. 4, c. 42, s. 3, places a limitation of two years within which such action is to be commenced.

5.—(1) Where any compensation under this Act has been fixed by or recovered in an action against the police authority, that authority shall, on the prescribed conditions having been complied with, pay in the prescribed manner the amount of such compensation out of moneys held by them or their treasurer on account of their police force, and shall also pay out of the said moneys, all costs and expenses payable by them in or incidental to the execution of this Act; and the amount required to meet the said payments (in this Act referred to as riot expenses), shall be raised as part of the police rate (*i*).

(2) In the case of a county divided into districts within the meaning of the County Police Act, 1840, as amended by section four of the County and Borough Police Act, 1856, the riot expenses shall be defrayed by the district in which the injury, stealing, or destruction took place, as part of the local expenditure thereof.

(3) Where the police forces of a borough and a county have been consolidated, riot expenses shall be paid by the county and borough respectively in such proportions as may have been agreed upon by the police authority for the county and the council of the borough, and if no agreement is made, in such proportions as a Secretary of State may from time to time determine; and such agreement may from time to time be made in the same manner and subject to the same conditions as an agreement to consolidate the said police forces (*k*).

(*i*) The police rate is made and levied under 2 & 3 Vict. c. 93, 3 & 4 Vict. c. 88, and 7 & 8 Vict. c. 33.

(*k*) By 3 & 4 Vict. c. 88, s. 14, and 19 & 20 Vict. c. 69, s. 5, boroughs may agree to consolidate their police with the county police, and the general control of such consolidated force is placed in the hands of the chief constable of the county. See also Local Government Act, 1888, ss. 24 (2) (i), 33, and 62.

(4) Where the police rate is limited, an addition to that rate shall, if necessary, be levied for the purpose of raising the sum required to pay riot expenses under this Act (*l*).

6. This Act shall apply—

(*a*) *In the case of the plundering, damage, or destruction of any ship or boat stranded or in distress on or near the shore of any sea or tidal water, or of any part of the cargo or apparel of such ship or boat, by persons riotously and tumultuously assembled together, whether on shore or afloat* (*m*), *and*

(b) In the case of the injury or destruction, by persons riotously and tumultuously assembled together, of any machinery, whether fixed or movable, prepared for or employed in any manufacture, or agriculture, or any branch thereof, or of any erection or fixture about or belonging to such machinery, or of any steam engine or other engine for sinking, draining, or working any mine or quarry, or of any staith or erection used in conducting the business of any mine or quarry, or of any bridge, waggon-way, or trunk for conveying minerals or other product from any mine or quarry ;

in like manner as if such *plundering, damage* (*m*), injury, or destruction were an injury, stealing, or destruction in respect of which compensation is payable under the foregoing provisions of this Act, *and as if, in the case of*

(*l*) The statute 10 Geo. 4, c. 44, s. 23 (The Metropolitan Police Act, 1829), provided that the rate leviable for the support of the police of the Metropolis should not exceed 8*d*. in the pound in any one year.

(*m*) The parts of this section printed in italics were repealed by The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 745. See *ante*, p. 102.

such ship, boat, or cargo not being in any police district, such plundering, damage, or destruction took place in the nearest police district (*m*).

7. For the purposes of this Act—

(a) Where a church or chapel has been injured or destroyed, or any property therein has been injured, stolen, or destroyed, the churchwardens or chapelwardens, if any, or, if there are none, the persons having the management of such church or chapel, or the persons in whom the legal estate in the same is vested ; and

(b) Where a school, hospital, public institution, or public building, has been injured or destroyed, or any property therein has been injured, stolen, or destroyed, the persons having the control of such school, hospital, institution, or building, or the persons in whom the legal estate in the same is vested :

shall be deemed to be the persons who have sustained loss from such injury, stealing, or destruction, and claims may be made by any one or more of such persons in relation both to the building and to the property therein, and payment to any such claimant shall discharge the liability of the police authority to pay compensation, but shall be without prejudice to the right of any person to recover the compensation from such payee.

8. [*This section contained provisions in respect of losses sustained, in districts other than the city of London or the metropolitan police district, within twelve months before the passing of this Act.*]

A special statute, 49 Vict. c. 11 (The Metropolitan Police (Compensation) Act, 1886), was passed to provide for the

payment of compensation to persons who suffered from the Riots of February 8th, 1886, in the Metropolis. It was repealed by the Statute Law Revision Act, 1898.

9. In this Act, unless the context otherwise requires—

The expression "person" includes a body of persons, corporate or unincorporate:

The expression "police district" means one of the districts set forth in the first column of the First Schedule to this Act; and the expressions "police authority" and "police rate" mean, as respects each police district, the authority and rate respectively mentioned opposite to that district in the second and third columns of that Schedule, and the expressions defined in that Schedule shall have the meanings thereby assigned to them:

The expression "house, shop, or building" includes any premises appurtenant to the same:

The expression "borough" means a borough subject to the Municipal Corporations Act, 1882, and the Acts amending the same:

The expression "Secretary of State" means one of her Majesty's Principal Secretaries of State (*n*).

10.—(1) [*This sub-section* (*o*) *repealed* 7 *&* 8 *Geo.* 4, *c.* 31; 2 *&* 3 *Will.* 4, *c.* 72, *and a part of s.* 477 *of the Merchant Shipping Act*, 1854. *The above Acts were specified in the Second Schedule to this Act.*]

(*n*) This definition was repealed by the Statute Law Revision Act, 1898. In the Interpretation Act, 1889, s. 12 (3), the expression "Secretary of State" is defined to mean "one of her Majesty's Principal Secretaries of State for the time being."

(*o*) This sub-section, together with the Second Schedule, was itself repealed by the Statute Law Revision Act, 1898, but s. 1 of that statute enacts that "where any enactment . . . has been repealed . . . by any enactment hereby repealed, such repeal . . . shall not be affected by the repeal effected by this Act."

(2) A reference in any Act to an Act or enactment hereby repealed shall be deemed to be made to this Act.

11. This Act shall not extend to Scotland or Ireland.

FIRST SCHEDULE.

POLICE DISTRICTS AND AUTHORITIES.

Police District.	Police Authority.	Police Rate.
The city of London and the liberties thereof.	The mayor and commonalty and citizens of London, acting by the common council (*p*).	The police rate.
The Metropolitan Police District.	The receiver for the Metropolitan Police District (*p*).	The rate authorised to be levied for raising that proportion of the sum required for defraying the expenses of the metropolitan police force which can be raised by a rate.
Any county, riding, parts, division, or liberty of a county maintaining a separate police force.	*The justices in general or quarter sessions assembled* (*p*).	The police rate.
A borough maintaining a separate police force.	The mayor, aldermen, and burgesses of the borough, acting by the council.	The borough fund or borough rate.
Any town not being a borough and maintaining a separate police force under any Local Act of Parliament.	The commissioners or other authority under the Local Act.	The fund or rate applicable under the Local Act for the expenses of the police force.
The river Tyne within the limits of the Acts relating to the Tyne Improvement Commissioners.	The Tyne Improvement Commissioners.	The tonnage rates and dues and other sums applicable under the Acts relating to the improvement of the river Tyne for the expenses of maintaining the police force.

(*p*) By the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (14), all business done by the quarter sessions in respect of the Riot

In this Act the expression "county" does not include a county of a city or county of a town.

All liberties of a county not maintaining a separate police force under the Acts relating to police forces shall be deemed to form part of the county of which they form part for the purposes of those Acts.

Where the police force of a borough has been consolidated with the police force of a county such borough shall be deemed for the purposes of this Act to form part of the police district constituted by the said county.

Such parts of any county as are within the Metropolitan police district or as form part of any other police district shall not be deemed for the purposes of this Act to form part of the county police district.

RIOT (DAMAGES) ACT, 1886.

REGULATIONS AS TO CLAIMS FOR COMPENSATION (*q*).

In pursuance of the above-mentioned Act, I, the Right Honourable Herbert Henry Asquith, one of her Majesty's Principal Secretaries of State, make the following Regulations:

1. All claims for compensation under the Act shall be made in writing, and shall be delivered as under:

When the matter in respect of which the claim is made arises in—

The city of London and the liberties thereof.	To the town clerk of London.
The Metropolitan police district.	To the receiver for the Metropolitan police district.

(Damages) Act, 1886, was transferred to the county council, but by s. 93 (2) that Act did not alter the authority within the Metropolitan Police District or the city of London.

(*q*) These regulations, together with forms of claim, are printed for H. M. Stationery Office, by Darling & Son, Ltd., 34—40, Bacon Street, E.

Any county, riding, parts, division, or liberty of a county maintaining a separate police force, or any borough the police force of which has been consolidated with the police force of a county.	To the clerk to the county council.
A borough maintaining a separate police force.	To the town clerk.
Any town not being a borough, and maintaining a separate police force under any local Act of Parliament.	To the clerk to the commissioners or other authority under the local Act.
The River Tyne within the limits of the Acts relating to the Tyne Improvement Commissioners.	To the secretary to the commissioners.

2. All claims shall be so delivered within fourteen clear days after the day when such injury, stealing, or destruction took place.

Provided that the police authority, on application to be made before the expiration of the fourteen days, may, for special cause shown, enlarge the period of fourteen days to forty-two days, and in the event of such application being refused, the applicant may, within seven days after such refusal, appeal to the Secretary of State, and his decision shall be conclusive as to whether the claim shall be received.

3. All claims shall be made in the form appended to these Regulations (*r*).

4. The claim shall specify the name and address of the claimant, the day and hour on which the injury, stealing, or destruction took place ; and as to the premises whether they are a house, shop, or building, and where they are situated, and the nature of the claimant's interest therein.

5. The claim shall state separately the sums claimed for—

(a) destruction of premises,

(b) injury to premises (including injury to windows, fittings, or fixtures thereof),

(*r*) The regulations, with forms of claim appended, can be purchased for one penny.

(c) injury to other property in or on the premises,

(d) theft or destruction of other property in or on the premises,

distinguishing, as regards (c) and (d), property belonging to the claimant from property belonging to others in his care.

6. Where the claim is in respect of *injury* done either to premises or to property therein, it shall state shortly the nature of the injury; if the injury has been repaired, it shall state the cost of the repairs and be accompanied by the bill for such repairs; if the injury has not been repaired, but is repairable, then the claim shall contain a specification of the repairs required and an estimate by a competent person of their cost.

7. Where the claim is in respect of *property* in or upon premises, whether such property has been injured, stolen, or destroyed, it shall, when practicable (except in the case of articles of the same nature and of small value, and except where the cost of repairs only is claimed), specify each article separately, and the sum claimed for it or for the injury thereto; and, when practicable, the claimant shall send with his claim vouchers or copies of vouchers for the sums paid by him for the property.

8. In all cases the claim shall state generally the evidence which the claimant is prepared to offer in support of it, and the place where such documents as he proposes to put in evidence may be inspected; and whether the claimant has received or may receive, or is entitled to, any compensation from any (and if so what) source for any loss included in his claim, and the amount of such compensation.

9. The claimant, if so required by the police authority, shall verify the claim by himself making such a statutory declaration, and by procuring and furnishing to the police authority such statutory declarations of other persons as the police authority may require; and he shall produce to the police authority and to any person nominated by that authority all such documents under his control as are needed to support his claim, and shall deliver to the police authority copies thereof or extracts therefrom as may be required, and shall give to the police authority or any person nominated by that authority access to the premises and produce the property for injury to which the claim is made.

10. The police authority may make separate awards as regards property of the claimant and property not belonging to him.

When an award includes compensation for property in the care of, but not belonging to the claimant, it may provide that prior to payment either the claimant shall produce receipts from the owners for the sums payable to them, or their authority to him to receive the same, or that the claimant or some other person to be approved by the police authority shall enter into a bond or personal undertaking with the police authority in such sum as the award shall name for securing payment to the owners of such property of the sums due to them. When an award includes compensation for stolen property, it may provide for a similar bond or undertaking for securing either repayment to the police authority of the whole or such part as the police authority may determine of the compensation paid for such stolen property as may be subsequently recovered, or the delivery of the property so recovered to the police authority to be realised by them for the benefit of the police rate.

11. No costs will be allowed to any claimant.

12. The above Regulations shall, with the necessary variations, apply:

(a) In the case of the plundering, damage, or destruction of any ship or boat stranded or in distress, on or near the shore of any sea or tidal water, or of any part of the cargo or apparel of such ship or boat, by persons riotously and tumultuously assembled together; and

(b) In the case of the injury or destruction, by persons riotously and tumultuously assembled together, of any machinery (whether fixed or moveable) prepared for or employed in any manufacture or agriculture, or any branch thereof, or of any erection or fixture about or belonging to such machinery, or of any steam engine or other engine for sinking, draining, or working any mine or quarry, or of any staith or erection used in conducting the business of any mine or quarry, or of any bridge, waggon-way or trunk for conveying minerals or other product from any mine or quarry.

13. The Regulations made under the above-mentioned Act on the 28th July 1886 are hereby revoked.

H. H. Asquith.

Whitehall,
30th June, 1894.

PART VI.

Disputes between employers and workmen, as to the terms of employment or as to the employment or non-employment of different persons, have in the past not infrequently culminated in disorder and breaches of the peace of a more or less serious nature. It seems to us, therefore, not entirely out of place to set out here the two following statutes relating to such disputes, namely, the Conspiracy and Protection of Property Act, 1875, and the Trade Disputes Act, 1906.

In dealing with this branch of the subject we do not in any way attempt to deal with the law as it affects trade unions, workmen or employers generally. We merely refer shortly to the subject in so far as it may have some bearing on the subject-matter of this book.

There have been a great number of cases decided under the Conspiracy and Protection of Property Act, 1875, or under earlier—now repealed—statutes, and many of these cases have been affected by the recent Trade Disputes Act, 1906. A full and detailed consideration of these cases would be out of place in these pages; we merely mention, for the purpose of reference, some of the more important cases.

THE CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875 (38 & 39 Vict. c. 86).

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes. [13th August 1875.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Conspiracy and Protection of Property Act, 1875."

2. *This Act shall come into operation on the first day of September, one thousand eight hundred and seventy-five.*

This section has been repealed by the Statute Law Revision (No. 2) Act, 1893.

Conspiracy, and Protection of Property.

3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute *between employers and workmen* shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

The second paragraph of this section was added by s. 1 of the Trade Disputes Act, 1906, *post*.

The words "between employers and workmen" in this section have been repealed by s. 5 (3) of the Trade Disputes Act, 1906. By that section "the expression 'trade dispute' means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person, and the expression 'workmen' means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises."

The following cases, amongst others, may be consulted as to the rule at common law relating to combinations to effect alterations in the rate of wages or to interfere with the contractual relation of masters and servants: *R.* v. *Tailors of*

Cambridge (1721), 8 Mod. 11; *R.* v. *Eccles* (1784), 1 Leach, 274; *R.* v. *Mawbey* (1796), 6 T. R. 636; *R.* v. *Hammond* (1799), 2 Esp. 719; *Hilton* v. *Eckersley* (1855), 24 L. J. Q. B. 353; *Mogul Steamship Co.* v. *McGregor*, [1892] A. C. 25; 56 J. P. 101; 61 L. J. Q. B. 295; *Allen* v. *Flood*, [1898] A. C. 1; 67 L. J. Q. B. 119; *Quinn* v. *Leathem*, [1901] A. C. 495; 65 J. P. 708; 70 L. J. P. C. 76; 85 L. T. 289; *South Wales Miners' Federation* v. *Glamorgan* (1905), 74 L. J. K. B. 525; *Read* v. *Friendly Society of Operative Stonemasons* (1902), 71 L. J. K. B. 994; *Giblan* v. *National Amalgamated Labourers' Union*, [1903] 2 K. B. 60; 72 L. J. K. B. 907; 89 L. T. 386; *Huttley* v. *Simmons* (1897), 67 L. J. Q. B. 213; *Temperton* v. *Russell*, [1893] (C. A.) 1 Q. B. 715, and the other cases mentioned in the note to s. 7, *post*.

Section 3 of the Trade Disputes Act, 1906, enacts that "An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills." And by s. 4 (1) of the same Act, "An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court." See *Taff Vale Railway* v. *Amalgamated Society of Railway Servants*, [1901] A. C. 426; 65 J. P. 596; *Walters* v. *Green*, [1899] 2 Ch. 696; 63 J. P. 742; 68 L. J. Ch. 730, and *The Denaby and Cadeby Main Collieries, Limited* v. *Yorkshire Miners' Association*, [1906] A. C. 584.

The rule at common law as to combinations of the description above mentioned has been at different times qualified by statutes, amongst others being 6 Geo. 4, c. 129; 22 Vict. c. 34; 34 & 35 Vict. c. 32, and the two statutes now more particularly under consideration.

For the effect of these statutes upon the common law reference may be made to the judgment of the court (Lord COLERIDGE, C.J., MATHEW, CAVE, SMITH, and CHARLES, JJ.), delivered by Lord COLERIDGE, C.J. in *Gibson* v. *Lawson*, [1891] 2 Q. B. 545; 55 J. P. 485; 61 L. J. M. C. 9; 17 Cox C. C. 354; 65 L. T. 573, wherein the dicta of BRAMWELL, B., and BRETT, J., in *R.* v. *Druitt* (1867), 10 Cox C. C. 600, and *R.* v. *Bunn* (1872), 12 Cox C. C. 316, were dissented from: "We were very properly reminded of the cases of *R.* v. *Druitt* and *R.* v. *Bunn*.

in which Lord BRAMWELL and Lord ESHER are both said to have held that the statutes on the subject have in no way interfered with or altered the common law, and that strikes and combinations expressly legalised by statute may yet be treated as indictable conspiracies at common law, and may be punished by imprisonment with hard labour . . . We are well aware of the great authority of the judges by whom the two cases above mentioned were decided, but we are unable to concur in these dicta, and, speaking with all deference, we think they are not law. It seems to us that to hold that the very same acts which are expressly legalised by statute remain nevertheless crimes punishable by the common law is contrary to good sense and elementary principle, and that the reports therefore cannot be correct . . . it seems to us that the law concerning agreements or combinations in reference to trade disputes is contained in 38 & 39 Vict. c. 86, and in the statutes referred to in it, and that acts which are not indictable under that statute are not now, if indeed they ever were, indictable at common law."

Upon this question the following cases may also be consulted: *R.* v. *Bykersdyke* (1832), 1 Man. & R. 179; *R.* v. *Duffield* (1851), 5 Cox C. C. 404; *R.* v. *Shepherd* (1869), 11 Cox C. C. 325, and *R.* v. *Hibbert* (1875), 13 Cox C. C. 82; and upon the subject of the common law relating to trade unions, see The Law relating to Trade Unions, by Sir Wm. Erle, ch. 1 (1869).

With reference to the provision in this section that the law of riot is not to be affected by this statute, the observations of TINDAL, C.J., *ante*, p. 53, may be consulted.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city borough town or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or

water, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced obliterated or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

See as to the expression "municipal authority," s. 14, *post*, and as to the right to claim to be tried by a jury, s. 9, *post*, and s. 15, *post*, as to the meaning of "maliciously."

5. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause

serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

See s. 15, *post*, as to the expression "maliciously."

Miscellaneous.

6. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

Before the charge is gone into the defendant may claim to be tried by a jury, and the court must inform the defendant of this right (s. 17 of the Summary Jurisdiction Act, 1879; see also s. 9, *post*). *Cf.* s. 26 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), and also the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15). As to the master's liability for accidents to his servants, see the Workmen's Compensation Act, 1906.

7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or

abstain from doing, wrongfully and without legal authority,—

1. Uses violence to or intimidates such other person or his wife or children, or injures his property ; or,
2. Persistently follows such other person about from place to place ; or,
3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof ; or,
4. Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place ; or,
5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall, on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

This last paragraph, printed in italics, has been repealed by s. 2 (2) of the Trade Disputes Act, 1906, and s. 2 (1) of that Act enacts that :

"It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade

dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working." Section 5 (3) of the Trade Disputes Act, 1906, contains the definition of "trade dispute."

The words at the beginning of the section "with a view to compel" do not import motive, but purpose (*Lyons & Sons* v. *Wilkins* (*No.* 2), [1899] (C. A.) 1 Ch. 255; 63 J. P. 339; 68 L. J. Ch. 146; 79 L. T. 709).

As to the legality of the acts which the respondents endeavoured to compel the other persons to abstain from doing, it was decided in *Farmer* v. *Wilson and Others* (1900), 64 J. P. 486; 69 L. J. Q. B. 496; 19 Cox C. C. 502; 82 L. T. 566, that besetting a depôt ship kept by an association of shipowners for receiving on board seamen intended to serve on vessels belonging to members of the association was an offence, although the association had no licence under s. 111 of the Merchant Shipping Act, 1894, as the men were entitled to remain on board the depôt ship and receive wages and rations. See also *Haile* v. *Lillingstone* (1891), 55 J. P. 676, and *Trollope* v. *London Building Trades Federation* (1895), (C. A.), 72 L. T. 342.

As to the meaning of the words "such other person," see *Lyons & Sons* v. *Wilkins*, *supra*; and *Farmer* v. *Wilson and Others*, *supra*. The words "wrongfully and without legal authority" apply to all the five sub-sections (*Lyons & Sons* v. *Wilkins*, *supra*).

There are many cases which may be consulted as to the meaning of the word "intimidate" either under this statute or the repealed statute, 6 Geo. 4, c. 129. Amongst such cases are: *Gibson* v. *Lawson*, [1891] 2 Q. B. 545; 55 J. P. 485; 61 L. J. M. C. 9; 65 L. T. 573; 17 Cox C. C. 354; *Curran* v. *Treleaven*, [1891] reported with *Gibson* v. *Lawson*; *Judge* v. *Bennett* (1887), 52 J. P. 247; 36 W. R. 103; *R.* v. *McCarthy*, [1903] 2 I. R. 146; *Hodges* v. *Graveling* (1867), 31 J. P. 501; *Skinner* v. *Kitch* (1867), L. R. 2 Q. B. 393; 31 J. P. 421; *Shelbourne* v. *Oliver* (1866), 30 J. P. 52, 213; *O'Neill* v. *Kruger* (1863), 27 J. P. 726; *O'Hare* v. *Craggs* (1867), 31 J. P. 39; *Wood* v. *Bowron* (1867), 31 J. P. 21; *O'Neill* v. *Longman* (1863), 27 J. P. 752; and the following may also be referred to: *R.* v. *Tomlinson*, [1895] 1 Q. B. 706; 64 L. J. M. C. 97; 18 Cox C. C. 75; 72 L. T. 156; and *R.* v. *Walton* (1863), L. & C. 288; 9 Cox C. C. 268; 32 L. J. M. C. 79, as to the degree of intimidation required to constitute the offence of

demanding money with menaces; and *R.* v. *Robertson* (1864), L. & C. 430; 10 Cox C. C. 9; 34 L. J. M. C. 35; 11 L. T. 386; *R.* v. *McGrath* (1869), L. R. 1 C. C. R. 205; 39 L. J. M. C. 7; 11 Cox C. C. 347; *R.* v. *Lovell* (1881), 8 Q. B. D. 185; 45 J. P. 407; 50 L. J. M. C. 91.

The case of *Smith* v. *Thomasson* (1890), 54 J. P. 596; 62 L. T. 68, may be referred to on the question of what amounts to persistently following, within sub-s. (2) of this section.

Upon the question of what amounts to a watching and besetting within sub-s. (4) of this section the judgments of LINDLEY, M.R., and CHITTY, L.J., in *Lyons & Sons* v. *Wilkins* (*No.* 2), [1899] *supra*, may be referred to, and also *Lyons & Sons* v. *Wilkins* (*No.* 1), [1896] 1 Ch. 811; 60 J. P. 325; 65 L. J. Ch. 601; 74 L. T. 358; *Charnock* v. *Court*, [1899] 2 Ch. 35; 63 J. P. 456; 68 L. J. Ch. 550; 80 L. T. 564; and *R.* v. *Hibbert* (1875), 13 Cox C. C. 82. As has already been pointed out, the last paragraph of this section of the Act of 1875 has been repealed by the Trade Disputes Act, 1906, and s. 2 (1) of the later Act must be referred to as to what persons may lawfully do in relation to this subject.

The conviction should specify the acts which the defendant purposed to compel the informant to do or to abstain from doing (*R.* v. *Mackenzie*, [1892] 2 Q. B. 519; 56 J. P. 712; 61 L. J. M. C. 181; 67 L. T. 201; 17 Cox C. C. 542). In *Ex parte Wilkins* (1895), 59 J. P. 294; 64 L. J. M. C. 221; 72 L. T. 567; 18 Cox C. C. 161, a commitment which stated that the defendant "has been this day charged for that he . . . did with a view to compel one F. T. to abstain from working as a shoe finisher in the employment of one S. C. a shoe manufacturer, in the parish of Dallington in the county aforesaid, which the said F. T. then had a legal right to do, unlawfully wrongfully and without legal authority follow the said F. T. with more than two other persons in a disorderly manner in a certain street to wit," etc., was held to sufficiently express the offence charged and to be a good commitment. So in *Smith* v. *Moody*, [1903] 1 K. B. 56; 67 J. P. 69; 72 L. J. K. B. 43; 87 L. T. 33, a conviction in the following form, "The defendant is this day convicted for that he . . . with a view to compel one T. W. M. to abstain from working for Messrs. J. W., Ltd., at Festing Colliery . . . which he had a legal right to do unlawfully wrongfully and without legal authority did injure the property of the said T. W. M.," was held to sufficiently specify the act which the respondent had a legal right to do, and was, so far, good; but as it did not sufficiently specify the property which was alleged to have

been injured, it was bad. See also *Metcalf* v. *Wiseman* (1888), 52 J. P. 439. See s. 9, *post*, as to the defendant's right to be tried on indictment; and *R.* v. *Edmonds* (1895), 59 J. P. 776, as to the form of indictment.

The cases mentioned under s. 3, *ante*, may also be referred to, and upon the provisions generally of s. 7, see HUDDLESTON, B., in *R.* v. *Bauld* (1876), 16 Cox C. C. 282.

8. Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act, and no power is given to reduce such penalty, the justices or court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one-fourth of the penalty imposed by such Act.

Section 4 of the Summary Jurisdiction Act, 1879, contains general powers of mitigating punishment. The court may in the case of imprisonment impose the same without hard labour, and reduce the prescribed period thereof, or do either of such acts; and in the case of a fine, if it be imposed in respect of a first offence, may reduce the prescribed amount thereof. See also Summary Jurisdiction Procedure, Douglas, 9th ed., p. 124. See the definition of "workmen" in s. 5 (3) of the Trade Disputes Act, 1906, *post*.

Legal Proceedings.

9. Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged

with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

There appears to be no power to give costs to prosecutors where the defendants elect to be tried by a jury under this section. In prosecutions for assaults committed in pursuance of conspiracies to raise the rate of wages, costs may be allowed to the prosecutors by 7 Geo. 4, c. 64, s. 23.

Where the offender is liable on summary conviction to be imprisoned for a term exceeding three months (*e.g.*, under s. 6), the accused may claim to be tried by a jury, and must be informed of this right before the charge is gone into under s. 17 of the Summary Jurisdiction Act, 1879. Under this section the costs of the prosecution become payable as in cases of felony.

10. Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act.

That is by the statute 11 & 12 Vict. c. 43, as amended by the Summary Jurisdiction Acts, 1879 and 1884, and subject to the provisions of s. 9 of the present statute. See 52 & 53 Vict. c. 63, s. 13.

11. Provided, that upon the hearing and determining of any indictment or information under sections four, five, and six of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses.

The Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), is the statute that now governs the procedure as to the calling a defendant or his or her wife or husband for the defence. See s. 6 of that Act, and *Charnock* v. *Merchant*, [1900] 1 Q. B. 474 ; 64 J. P. 183 ; 69 L. J. Q. B. 221 ; 19 Cox C. C. 445 ; 82 L. T. 89.

12. In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

(1) The appeal shall be made to some court of general or quarter sessions.

. . . . .

This section is partly repealed by the Summary Jurisdiction Act, 1884. The procedure on appeal is now regulated by s. 31 of the Summary Jurisdiction Act, 1879.

Definitions.

13. In this Act,—

The expression "The Summary Jurisdiction Act" means the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same ; and

The expression "court of summary jurisdiction" means—

(1) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room ; and

(2) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division ; and

(3) As respects any city, town, liberty, borough, place, or district for which a stipendiary

magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and

(4) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that, as respects any case within the cognisance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of court.

See also the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13.

14. The expression "municipal authority" in this Act means any of the following authorities, that is to say, the *Metropolitan Board of Works*, the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being subject to the *Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales,"* and any Act amending the same; any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

The powers, duties, and liabilities of the Metropolitan Board of Works were transferred to the London County Council by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8).

The statute 5 & 6 Will. 4, c. 76, has been repealed. The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50) is now substituted for the earlier Act. See s. 242.

15. The word "maliciously" used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act.

The short title of this Act is the Malicious Damage Act, 1861, and s. 58, is as follows:

"Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence

shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise."

"Malice, in the legal acceptation of the term, is not confined to personal spite against individuals, but consists in a conscious violation of the law to the prejudice of another" (*per* Lord CAMPBELL, in *Ferguson* v. *Earl of Kinnoull* (1842), 9 Cl. & F. 321). See also *R.* v. *Martin* (1881), 8 Q. B. D. 54; 46 J. P. 228; and *R.* v. *Welch* (1875), 1 Q. B. D. 23; 40 J. P. 183.

Saving Clause.

16. Nothing in this Act shall apply to seamen or to apprentices to the sea service.

This section does not exempt seafaring men as a class; the word "seamen" is to be taken to mean persons employed under and subject to the liabilities imposed by the Merchant Shipping Acts (*R.* v. *Lynch and Jones*, [1898] 1 Q. B. 61; 67 L. J. Q. B. 59; 18 Cox C. C. 677; 77 L. T. 568).

The case of an offence against a seaman by a person who is not a seaman is not excluded from the Act by this section (*Kennedy* v. *Courie*, [1891] 1 Q. B. 771; 55 J. P. 680; 60 L. J. M. C. 170; 17 Cox C. C. 320; 64 L. T. 598).

Section 17 repeals 34 & 35 Vict. c. 32, and other statutes.

Sections 18, 19, 20, apply the statute to Scotland, and provide for the prosecution of offences committed there.

Section 21 makes the statute applicable to Ireland.

THE TRADE DISPUTES ACT, 1906.

(6 EDW. 7, c. 47.)

An Act to provide for the regulation of Trades Unions and Trade Disputes. [21st December 1906.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present

Parliament assembled, and by the authority of the same, as follows:

Amendment of law of Conspiracy in the case of Trade Disputes.

1. The following paragraph shall be added as a new paragraph after the first paragraph of section three of the Conspiracy and Protection of Property Act, 1875:

"An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable."

The first paragraph of s. 3 of the Act of 1875 made agreements or combinations to do an act in furtherance of a trade dispute not indictable as a conspiracy, if such act committed by one person would not have been punishable as a crime. See *ante*.

Peaceful Picketing.

2.—(1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

(2) Section seven of the Conspiracy and Protection of Property Act, 1875, is hereby repealed from "attending at or near" to the end of the section.

The part of s. 7 that is repealed is "Attending at or near the house or place where a person resides, or works, or carries on

business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section." See *Lyons & Sons* v. *Wilkins* (*No.* 2), and the other cases mentioned in the notes to ss. 3, 7 of the Conspiracy and Protection of Property Act, 1875, *ante*.

Removal of Liability for interfering with another person's business, etc.

3. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.

See the notes to the Conspiracy and Protection of Property Act, *ante*.

Prohibition of Actions of Tort against Trade Unions.

4.—(1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

See *Walters* v. *Green*; *Taff Vale Railway* v. *Amalgamated Society of Railway Servants*, and *Denaby and Cadeby Main Collieries, Limited* v. *Yorkshire Miners' Association*, *ante*.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trades Union Act, 1871, section

nine, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

Short Title and Construction.

5.—(1) This Act may be cited as the Trade Disputes Act, 1906, and the Trade Union Acts, 1871 and 1876, and this Act may be cited together as the Trade Union Acts, 1871 to 1906.

(2) In this Act the expression "trade union" has the same meaning as in the Trade Union Acts, 1871 and 1876, and shall include any combination as therein defined, notwithstanding that such combination may be the branch of a trade union.

(3) In this Act and in the Conspiracy and Protection of Property Act, 1875, the expression "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person, and the expression "workmen" means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises; and, in section three of the last-mentioned Act, the words "between employers and workmen" shall be repealed.

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